

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

SMARTFLASH LLC and )  
SMARTFLASH TECHNOLOGIES ) DOCKET NO. 6:13cv447  
LIMITED )

-vs- )

) Tyler, Texas  
) 1:16 p.m.  
APPLE INC. ) February 16, 2015

TRANSCRIPT OF TRIAL  
AFTERNOON SESSION  
BEFORE THE HONORABLE RODNEY GILSTRAP,  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFFS:

MR. BRADLEY W. CALDWELL  
MR. JASON D. CASSADY  
MR. JOHN AUSTIN CURRY  
CALDWELL CASSADY & CURRY  
2101 Cedar Springs Rd., Ste. 1000  
Dallas, Texas 75201

MR. T. JOHN WARD, JR.  
WARD & SMITH LAW FIRM  
P.O. Box 1231  
Longview, Texas 75606

1 FOR THE DEFENDANTS:

2 MR. JAMES R. BATCHELDER  
3 ROPES & GRAY LLP  
1900 University Ave., 6th Floor  
4 East Palo Alto, California 94303-2284

5  
6 MS. CHING-LEE FUKUDA  
MR. KEVIN J. POST  
7 ROPES & GRAY LLP  
1211 Avenue of the Americas  
8 New York, New York 10036-8704

9  
10 MR. ERIC ALBRITTON  
ALBRITTON LAW FIRM  
11 P. O. Box 2649  
Longview, Texas 75606

12

13

14

15

16 COURT REPORTERS: MS. SHELLY HOLMES, CSR, TCRR  
OFFICIAL COURT REPORTER  
shelly\_holmes@txed.uscourts.gov

17

18 MS. SHEA SLOAN, CSR, RPR  
OFFICIAL COURT REPORTER  
shea\_sloan@txed.uscourts.gov

19

20

21

22

23

24 Proceedings taken by Machine Stenotype; transcript was  
25 produced by a Computer.

1 P R O C E E D I N G S

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Be seated, please.

5 All right. Let's bring -- let's bring in the jury,  
6 please.

7 COURT SECURITY OFFICER: All rise for the jury.

8 (Jury in.)

9 THE COURT: Please be seated.

10 Ladies and Gentlemen of the Jury: You've now been  
11 sworn as the jury in this case. As the jury, you will decide  
12 the disputed questions of fact.

13 As the Judge, I will decide the questions of law  
14 and procedure. And from time to time during the trial and at  
15 the end of the trial, I'll instruct you on the rules of law  
16 that you must follow in making your decisions.

17 Soon, the lawyers for each side will make what is  
18 called an opening statement. Opening statements are intended  
19 to assist you in understanding the evidence. However, what  
20 the lawyers say during opening statements is not evidence.  
21 It's only what they expect the evidence will show.

22 What you should base your decision on is the  
23 evidence that you will hear, which comes from the sworn  
24 testimony from the witness stand, from depositions that are  
25 shown to you, and from exhibits that I admit into evidence.

1           This is the evidence that you should rely on in  
2 making your decisions as to the verdict in this case.

3           The -- the party who brings the lawsuit is called  
4 the Plaintiff. The Plaintiffs in this case are Smartflash  
5 LLC and Smartflash Technologies Limited, who I will refer to  
6 simply as the Plaintiff or Smartflash.

7           The party against whom the -- the suit is brought  
8 is called the Defendant. In this action, the Defendant is  
9 Apple Inc., who will be referred to, likewise, as either the  
10 Defendant or simply just Apple.

11           As I told you during the voir dire this morning,  
12 this is a case of alleged patent infringement. After opening  
13 statements, Smartflash, the -- the Plaintiff, will call  
14 witnesses and present their evidence. Then the Defendant,  
15 Apple, will have an opportunity to call witnesses and present  
16 its evidence.

17           After the parties' case-in-chief has been  
18 presented, then the Plaintiff, Smartflash, may be permitted  
19 to call additional witnesses for what we call a rebuttal case  
20 or rebuttal evidence.

21           Then after all the evidence is in, I will instruct  
22 you upon the applicable law to apply in this case. I will  
23 give you detailed instructions both orally, as I am doing  
24 now, and after I give you your final instructions, after all  
25 the evidence is in, then you will hear closing arguments from

1 the attorneys.

2 And after you have heard their closing arguments,  
3 then and only then will I instruct you to retire to the jury  
4 room and to discuss the case among yourselves in an attempt  
5 to reach a verdict.

6 Only when you retire to the jury room after all the  
7 evidence is in, are you permitted to discuss the case among  
8 yourselves; but at that time, you are required to discuss the  
9 case among yourselves.

10 During the presentation of the evidence and  
11 throughout the case, I want you to keep an open mind. Don't  
12 decide any fact until you heard all the evidence, then until  
13 you've heard the closing arguments, and finally after you've  
14 heard my final instructions to you. Pay close attention to  
15 the evidence and the testimony from the witnesses.

16 If you elect to take notes during the trial, you  
17 may do so. We have some juror notebooks that I'm going to  
18 ask the security -- excuse me -- the Court Security Officer  
19 to pass out at this time. There's one juror notebook for  
20 each member of the jury.

21 (Pause in proceedings.)

22 THE COURT: Now that you have your notebooks, if  
23 you'll open those up, in those notebooks, you're going to  
24 find copies of the patents-in-suit.

25 You're also going to find a list of the terms that

1 the Court has given you specific definitions to follow.

2 You're going to find a page for each witness in the  
3 case that has a picture of the witness at the top of each  
4 page with blank spaces below the picture in which you can  
5 make notes.

6 And you'll also find a legal pad in there, together  
7 with a pen, which you can also make additional notes, if you  
8 choose to.

9 You'll have lots of time to look through that  
10 notebook as the trial goes on, so if you'll close those now  
11 and let me complete my instructions to you.

12 If you decide to take notes in this case, be  
13 careful not to get so involved in your note-taking that you  
14 become distracted and miss part of the testimony. You don't  
15 need to write down everything that happens, but take such  
16 notes as you feel are appropriate and will be helpful to you.

17 Your notes are to be used as an aid to your  
18 memories only, and if your memory should differ from your  
19 notes, then you should rely on your memory and not your  
20 notes.

21 Don't be unduly influenced by the notes of another  
22 juror. A juror's notes are not entitled to any greater  
23 weight than the recollection of each juror concerning the  
24 testimony and evidence.

25 For example, just because someone has written

1 something down does not necessarily mean that they heard it  
2 right or they wrote it down correctly. The fact that it's  
3 written into the notes does not mean that it's to be given  
4 any greater weight than just what your memory would be. It's  
5 there to help you and for no other purpose.

6 Even though Ms. Holmes, the Court Reporter seated  
7 in front of me, is here to take down everything that's said  
8 during the trial, the written transcript of everything that's  
9 said will not be available for you to use in time for you to  
10 deliberate at end of the trial.

11 The purpose of the transcript is in case there's an  
12 appeal after this trial is over, but it's not for your use as  
13 a part of your jury deliberations. So you'll have to rely on  
14 your memories of the evidence as you deliberate after the  
15 trial is complete.

16 As I mentioned to you this morning, it's very  
17 important that until the trial is over and I've released you  
18 from your service as jurors, that you are not to discuss this  
19 case with anyone, and do not permit anyone -- anyone to  
20 discuss the case with you in your presence, including family  
21 or friends.

22 When you take recesses during the trial, when you  
23 are on lunch during the trial as you come and go, those are  
24 times you might overhear something about the case. Be  
25 mindful not to listen. Be mindful not to pay attention. Do

1 not engage in hearing about anything, as well as talking  
2 about anything.

3 Again, it is critical that your decision-making  
4 process be limited solely and only to the evidence that comes  
5 in under oath from the witness stand and the exhibits that  
6 are produced during -- and admitted by the Court during the  
7 trial.

8 That's part of why you each have a badge that says  
9 "juror" on it, so that when people are talking about this  
10 trial and they see you coming, they'll know that they're  
11 supposed to stop talking so you don't overhear what they say.  
12 Be sure that you keep that juror badge clearly visible on the  
13 outside of your clothing throughout your trial process.

14 You're to hold yourself apart from the rest of the  
15 people here in the courthouse and elsewhere as you discharge  
16 your duties as jurors.

17 I mentioned to you before lunch, and I will say it  
18 again, you're not to do any research regarding this case from  
19 any source whatsoever. You're not to attempt to communicate  
20 through social media by posting anything on the Internet or  
21 any type of communication whatsoever.

22 During the trial, it may be necessary from time to  
23 time for the Court to confer with the lawyers here at the  
24 bench and outside of your hearing. I will handle those  
25 matters as quickly and as conveniently and briefly as I can,



1 but you should remember that that may be necessary during  
2 part of the trial.

3 You're not to speculate about what the Court may  
4 discuss with the lawyers outside of your hearing. There may  
5 be times that I address the lawyers when you are not in the  
6 courtroom, and that also is outside your hearing.

7 You should not attempt to speculate or guess about  
8 any communications that the Court might have with counsel  
9 outside of your hearing, either when you're out of the  
10 courtroom or when I call them to the bench.

11 Let me give a brief overview of the nature of the  
12 case. This is a patent case. It involves three patents  
13 identified by their numbers. They are United States Patent  
14 No. 7,334,720, which all patents are commonly known by their  
15 last three digits. So that one will be commonly called the  
16 '720 patent.

17 Then the second patent is U.S. Patent 8,118,221 or  
18 the '221 patent, and United States Patent No. 8,336,772 or  
19 the '772 patent.

20 These patents may be referred to at various times  
21 as the patents-in-suit or the asserted patents. These  
22 patents generally -- generally relate to data storage and  
23 access systems for paying for downloading and controlling  
24 access to data, such as audio and video data, text, software,  
25 games, and other types of data.

1           As I mentioned earlier, you'll have a copy -- a  
2 complete copy of each of these three patents-in-suit in your  
3 juror notebooks.

4           The Plaintiff in this case, Smartflash, contends  
5 that the Defendant, Apple, is directly and indirectly  
6 infringing certain claims of the patents-in-suit by  
7 importing, making, and selling products that include the  
8 patented technology.

9           Smartflash also contends that Apple's infringement  
10 is willful. Smartflash contends that it is entitled to  
11 damages as a result of Apple's infringement.

12           Apple denies that it is infringing and contends  
13 that the patents-in-suit are invalid as being either  
14 anticipated by or obvious in light of what is called prior  
15 art.

16           Apple further contends that certain claims of the  
17 patent are invalid because the patent specification does not  
18 have an adequate written description.

19           Apple further contends that Smartflash is not  
20 entitled to any damages.

21           That may not be completely clear to you at this  
22 time. I know there are new words and new concepts that have  
23 been thrown at you. I'm going to define a lot of those words  
24 and concepts for you as we go through the instructions.

25           The attorneys are going to discuss them in their

1 opening statements. The witnesses are also going to help you  
2 through their testimony understand those words. So do not  
3 feel overwhelmed at this stage. It will come together as we  
4 go through the trial, I assure you.

5 Let me visit with you briefly about United States  
6 patents and our United States patent system in general. You  
7 saw some of this on the patent video that was shown to you by  
8 the clerk this morning before jury selection.

9 Patents are issued by the United States Patent and  
10 Trademark Office, which is an agency of the United States  
11 Government, and will often simply be referred to, for  
12 shorthand purposes, as the PTO, Patent and Trademark Office.

13 The United States Government is empowered by our  
14 Constitution to enact patent laws and issue patents to  
15 protect inventions. Inventions that are protected by patents  
16 may be products, compositions, or methods for doing something  
17 or for using or making a product or a composition.

18 The purpose of the patent system is to help advance  
19 science and technology. A patent is granted for a set,  
20 specific period of time for which the patents involved in  
21 this case have not yet expired.

22 Once a patent expires, the patent owner may not  
23 exclude anyone from making or using the claimed invention in  
24 the patent. The invention then becomes part of what we call  
25 the public domain, which means that it's free for anyone to

1 use.

2           During the term of the patent, however, if another  
3 person, without the patent owner's permission, makes, uses,  
4 sells, or offers to sell or imports into the United States  
5 something that is covered by the claims of the patent, then  
6 the person is said to infringe the patent.

7           The patent owner may enforce a patent against  
8 persons or companies believed to be infringers in a lawsuit  
9 in federal court, such as we have in this case. The law does  
10 not require that the patent owner give advanced notice to a  
11 defendant that the patent -- that the plaintiff intends to  
12 file suit.

13           To be entitled to patent protection, an invention  
14 must be new, useful, and non-obvious. As I noted, a patent  
15 gives the owner the right to exclude other people from  
16 making, using, selling, or offering for sell or importing  
17 what is covered by the claims of the patent.

18           Everyone, however, has the right to use existing  
19 knowledge and principles. A patent cannot remove from the  
20 public the ability to use what was known or obvious before  
21 the invention was made or patent protection was sought.

22           Let me visit with you briefly about the parts of a  
23 patent.

24           A patent includes two basic parts: A written  
25 description of the invention and the patent claims. The

1 written description, which may include drawings, is often  
2 referred to as the patent specification.

3 If you'll open your notebooks and find the '772  
4 patent, I'll identify these different sections.

5 The cover page of the '772 patent provides  
6 identifying information, including the date the patent was  
7 issued, the patent number along the top, as well as the  
8 inventors' names, and the filing date, and the name of the  
9 assignee, which is Smartflash, the Plaintiff in this case.

10 It also includes a list of certain prior art  
11 publications on the first through the third pages, which were  
12 considered by the Patent Office when it decided to issue the  
13 patent.

14 The specification of the '772 patent begins with an  
15 abstract found on the cover page. The abstract is a brief  
16 statement about the subject matter of the invention.

17 You'll see it starts with the first sentence: Data  
18 storage and access systems enable downloading and paying for  
19 data, such as audio and video data, text, software, games,  
20 and other types of data.

21 Next are the drawings which appear as Figures 1  
22 through 13 on the next 17 pages. The -- the drawings depict  
23 the various aspects or features of the invention. They're  
24 described in words later in the patent specification.

25 The written description of the invention appears

1 next. In this portion of the patent, each page is divided  
2 into two columns, which are numbered at the top. The lines  
3 on each page are also numbered going down the middle of the  
4 column, as you'll see.

5 The written description of the '772 patent begins  
6 at Column 1, Line 1. So when you see a reference during the  
7 trial to a column and the line number, you can go to that  
8 part of the patent and locate that.

9 The written description of the '772, as I've said,  
10 begins at Column 1, Line 1, and continues to Column 25, Line  
11 62. It includes a background section, a summary of the  
12 invention, and a detailed description of the invention,  
13 including some specific examples.

14 The specification ends with the numbered paragraphs  
15 called claims. The claims may be divided into a number of  
16 parts referred to as claim limitations.

17 In the '772 patent, the claims begin at Column 25,  
18 Line 64, where it says what is claimed -- or "what is claimed  
19 is" and continue to the end of the patent at Column 32, Line  
20 56. Not all of those claims are being asserted in this case,  
21 just certain ones.

22 Now, let me talk to you a minute about the  
23 significance of the patent claims. The claims of a patent  
24 are the main focus of a patent case, because it is the claims  
25 that define the patent owner's rights under the law. The

1 claims define what the patent owner may exclude others from  
2 doing during the term of the patent.

3 The claims of a patent serve two important  
4 purposes. First, they set the boundaries of the invention  
5 covered by the patent; and second, they provide notice to the  
6 public of those boundaries. Thus, when a product or a method  
7 is -- is accused of infringing a patent, the patent claims  
8 are compared to the accused product or method to determine  
9 whether there is infringement.

10 The claims of a patent must be analyzed to act --  
11 to assess infringement because the claims define what the  
12 invention is. The claims are also at issue when the validity  
13 of the patent is challenged. In reaching your determinations  
14 with respect to infringement and validity, you must consider  
15 each claim separately.

16 Also in your notebooks, you'll find the Court's  
17 construction of the meanings of certain terms in the asserted  
18 claims of the patents-in-suit. You must use those  
19 definitions or meanings that I give to you when you decide  
20 the issues of infringement and invalidity. Those terms are  
21 in a separate tab in your notebooks.

22 As I say, you must use those meanings that I give  
23 to you when you decide the issues of infringement and  
24 invalidity.

25 There are certain words within the claims -- there

1 are certain words that at a pretrial proceeding, the  
2 attorneys had differing arguments over as to what a  
3 particular word meant. They asked the Court to construe it,  
4 and I've done that. And those are the definitions, my  
5 constructions, that I've supplied you with in your notebooks.

6 It's kind of like if you were reading a book and  
7 you came to a particular passage where a word was used that  
8 you didn't understand. There was a dictionary for you to  
9 look it up in. That list of claim -- of terms that I've  
10 construed, those definitions are your dictionary to look up  
11 at -- during your analysis.

12 Let me visit with you about how a patent is  
13 obtained. Let's talk about how someone obtains a United  
14 States patent.

15 As I said, the United States Patent and Trademark  
16 Office is an agency of our Federal Government that initially  
17 examines patent applications and issues patents.

18 When an applicant for a patent files a patent  
19 application with the PTO, or the Patent and Trademark Office,  
20 the application is assigned to a Patent Examiner.

21 The Patent Examiner examines the application to  
22 determine whether the invention described in the patent meets  
23 the requirements of the patent laws for patentable  
24 inventions.

25 In examining the patent application, the Patent



1 Examiner makes a search in the Patent Office records for  
2 prior art pertinent to the claims of the patent application.

3 If an applicant believes that a claimed invention  
4 is disclosed in an earlier patent application, the applicant  
5 may claim priority back to that earlier application. This  
6 earlier application is called a priority application.

7 The Patent Office records may or may not contain  
8 all of the prior art pertinent to the claims of a patent  
9 application. The prior art is defined by statute, and I will  
10 give you specific instructions at the close of the evidence  
11 as to what constitutes prior art.

12 But, generally, it's the technical information and  
13 knowledge that was known to the public either before the  
14 invention by the applicant or more than one year before the  
15 effective date of the application. Prior art is not limited  
16 to patents and may also include publications and products.

17 During this process, the Patent Examiner advises  
18 the applicants of his or her findings in a communication  
19 which is called an Office Action.

20 The Examiner may reject the claims, if he or she  
21 believes that they do not meet the requirements for  
22 patentable inventions. The applicant may then respond to the  
23 application -- to the rejection with arguments to support the  
24 claims and may sometimes make changes or amendments to the  
25 claims or submit new claims.

1           If the Examiner concludes that the legal  
2 requirements for the patent have all been satisfied, then the  
3 Patent Examiner is said to allow the claims, and the  
4 application then issues as a United States patent.

5           This process, from the filing of the patent  
6 application to the issuance of the patent, is called patent  
7 prosecution. And that's what I just described to you that  
8 goes on between the applicant and the Patent Office, which  
9 includes the back-and-forth process that I've mentioned.

10          The record of papers relating to the patent  
11 prosecution is referred to as the prosecution history or the  
12 file history.

13          In other words, it documents -- its documents,  
14 rather, relate to what is transpired between the applicant  
15 and the Examiner at the PTO so that generally -- that  
16 generally is how the patent process works.

17          I'll now give you some information about the issues  
18 to be presented to you at this trial, as well as a short  
19 overview of the applicable law.

20          At the close of the trial, you'll be given more  
21 specific instructions that you must follow in reaching your  
22 verdict.

23          You'll also be given a verdict form and the  
24 questions you must answer which will constitute your verdict.

25          And that will result in the end of the case, the

1 returning of your verdict after all the evidence.

2 Let me give you some instructions that you'll be  
3 following in deciding this case. Let me talk to you again  
4 about the burden of proof required in this case.

5 In any legal action, facts must be proved by a  
6 required standard of evidence known as the burden of proof.

7 You may have heard this referred to in a criminal  
8 case as beyond a reasonable doubt.

9 In a civil case, it is proof by a preponderance of  
10 the evidence or proof by clear and convincing evidence.

11 These are the two different burdens used in a  
12 patent case such as this.

13 The first, as I mentioned, is a preponderance of  
14 the evidence standard. The second is the clear and  
15 convincing evidence standard. Beyond a reasonable doubt is  
16 the burden of proof or standard used in a criminal case, and  
17 it has no application in a civil case such as this.

18 In this case, the Plaintiff, Smartflash, must prove  
19 its claims of patent infringement and damages by a  
20 preponderance of the evidence; that is, when a party has the  
21 burden by a preponderance of the evidence, it means that you  
22 must be persuaded that what the parties seeks to prove is  
23 more probably true than not true. I'll say that again. More  
24 probably true than not true.

25 Apple has the burden of proving its invalidity

1 defenses by a heavier burden called clear and convincing  
2 evidence. When a party has a burden of proof by clear and  
3 convincing evidence, it means that the evidence must produce  
4 in your minds a firm belief or conviction as to the matters  
5 sought to be established.

6 It is a higher standard, a greater burden than a  
7 preponderance of the evidence, but it is less than beyond a  
8 reasonable doubt, which, as I say, does not apply in this  
9 case at all.

10 Let me next visit with you about infringement.  
11 Smartflash contends that Apple is infringing the  
12 patents-in-suit, by making, using, selling, offering for  
13 sale, and importing into the United States certain accused  
14 products.

15 Smartflash also contends that Apple infringes  
16 indirectly by inducing the direct infringement of others.

17 Smartflash contends that Apple infringes the  
18 following patent claims. And you may mark these in your  
19 notebooks, if you choose to.

20 These are Claim 13 of the '720 patent; Claim 32 of  
21 the '221 patent; and Claims 26 and 32 of the '772 patent.

22 I'll say that again. Claim 13 of the '720 patent;  
23 Claim 32 of the '221 patent; and Claims 26 and 32 of the '772  
24 patent.

25 Let me first talk to you about direct infringement,

1 and then I will instruct you on indirect infringement.

2 Smartflash seeks to prove direct infringement of  
3 the patents by literal infringement. To prove literal  
4 infringement of a particular patent claim, the Plaintiff, in  
5 this case, Smartflash, must prove by a preponderance of the  
6 evidence that the accused products or accused manner of use  
7 of the accused products include each and every limitation of  
8 a particular claim.

9 A person or a company can directly infringe a  
10 patent without knowing that what it is doing is infringement.  
11 It may directly infringe, even though it believes in good  
12 faith that what it is doing is not infringement of any patent  
13 and even if it did not know the patent.

14 Smartflash also alleges that Apple has indirectly  
15 infringed the asserted claims by inducing another's direct  
16 infringement.

17 To prove that Apple induced someone else to  
18 infringe, Smartflash must prove by a preponderance of the  
19 evidence that Apple encouraged or instructed customers or  
20 other persons to make or use the patented products and that  
21 Apple knew or was willfully blind to the fact that the  
22 encouragement or instructions would result in the customer  
23 acting in a way that infringed the patent.

24 Apple denies that it has either directly or  
25 indirectly infringed any of the claims of the

1 patents-in-suit.

2 I'll explain in more detail at the end of the case  
3 how you will decide the allegations of infringement.

4 Now, with regard to the defense of invalidity,  
5 Apple contends that the asserted claims of the  
6 patents-in-suit are invalid.

7 Invalidity is a defense to patent infringement. A  
8 person accused of infringement has the right to assert that  
9 the claimed invention in a patent did not meet the  
10 requirements for patentability and, therefore, that the  
11 issued patent claim is invalid.

12 Let me briefly explain the legal requirements for  
13 each of the grounds on which Apple relies to contend that the  
14 asserted patent claims are invalid, and I'll give you more  
15 specific details on each ground in my final instructions at  
16 the end of the case.

17 The first ground is called anticipation. Apple  
18 contends that the inventions covered by the asserted claims  
19 of the patents-in-suit are not new. An invention that is not  
20 new is said to be anticipated by the prior art. To prove  
21 that a claim is anticipated by prior art, Apple must prove by  
22 clear and convincing evidence that each and every limitation  
23 of the claim was present in a single item of prior art -- in  
24 one single item of prior art.

25 Next is obviousness. Apple also contends that the

1     asserted claims of the patents-in-suit are invalid for  
2     obviousness. To prove invalidity of a patent based on  
3     obviousness, Apple must prove by clear and convincing  
4     evidence that the invention defined by the claim would have  
5     been obvious to a hypothetical person of ordinary skill in  
6     the art at the time the invention was made.

7             So we've discussed two ways that a patent can be  
8     found to be invalid; anticipation and/or obviousness.

9             Next as a grounds for invalidity is written  
10    description. Apple also contends that certain asserted  
11    claims of the '772 patent are invalid because the description  
12    of the invention in the specification does not meet certain  
13    requirements.

14            A patent claim is invalid if the specification of  
15    the patent does not contain an adequate written description  
16    of the claimed invention. That's referred to as the written  
17    description requirement.

18            To succeed, Apple must prove by clear and  
19    convincing evidence that the specification fails to meet the  
20    law's written description requirements for an invention.

21            That will conclude my instructions regarding  
22    infringement and regarding invalidity at this time.

23            As I say, you will get further instructions from  
24    the Court at the end of the case.

25            Now, let me visit with you briefly about the issue

1 of damages. Smartflash claims that it is entitled to damages  
2 as a result of Apple's infringement in the form of a  
3 reasonable royalty for each of Apple's accused products.

4 Damages cannot be speculative. Smartflash must  
5 prove damages by a preponderance of the evidence.

6 The fact that I am instructing you about damages  
7 does not mean that Smartflash is or is not entitled to  
8 recover damages. I'll explain to you further at the end of  
9 the trial how reasonable royalties are determined.

10 After the completion of the evidence and at the end  
11 of the trial, I will give you a written charge that will have  
12 all of these and other instructions in much greater detail  
13 than I'm giving you now. At that time, I will also give to  
14 the jury a written verdict form that will ask you to answer  
15 certain questions that deal with infringement, invalidity,  
16 and damages.

17 The jury's answers to those questions, the answers  
18 of which will constitute your verdict in this case, must be  
19 unanimous.

20 Now, with regard to construction of the claims, I  
21 will instruct you now and at the end of the case about the  
22 meaning of some of the claim language. You must use the  
23 meanings that I give you when you decide the issues of  
24 infringement and invalidity.

25 In deciding whether or not an accused product or



1 method infringes a patent, the first step is to understand  
2 the meaning of the words used in the patent claims. It's my  
3 job as the Judge to determine what the patent claims mean and  
4 to instruct you about that meaning. You must accept the  
5 meanings that I give you and use them when you decide whether  
6 or not a patent claim is infringed and whether or not a  
7 patent claim is invalid.

8 Patent claims may exist in two forms, referred to  
9 as independent claims and dependent claims.

10 An independent claim does not refer to any other  
11 claim in the patent. It is independent. It is not necessary  
12 to look at any other claim to determine what an independent  
13 claim covers.

14 A dependent claim refers to at least one other  
15 claim in the patent. A dependent claim includes each of the  
16 limitations of that other claim or claims to which it refers,  
17 as well as the additional limitations recited within the  
18 dependent claim itself.

19 Therefore, to determine what a dependent claim  
20 covers, it's necessary to look at both the dependent claim  
21 itself and the independent claim or claims from which it  
22 refers or depends.

23 The claims of the patents-in-suit use the words  
24 comprises and comprising. Comprising means including or  
25 containing. A claim that includes the word comprising or

1 comprises is not limited to methods or devices having only  
2 the elements that are recited in the claim but also covers  
3 methods or devices that add additional elements.

4 Take, for example, a claim that covers a table. If  
5 the claim recites a table comprising a tabletop, legs, and  
6 glue, the claim will cover any table that contains these  
7 structures, even if the table also contains other structures,  
8 such as a leaf or wheels on the legs.

9 That's a very simple example using the word  
10 comprising and what it means. In other words, it can have  
11 other features in addition to those that are covered by the  
12 patent.

13 I've instructed you on the two different types of  
14 claims at issue in this case.

15 I'll next define the meaning of the words used in  
16 the patent claims at issue. As I say, you must use the  
17 definitions that I provide to you in considering the issues  
18 of infringement and invalidity.

19 Now, if you'll find in your notebooks the patent  
20 claims chart. It should be easy to locate. I'm not going to  
21 read all of those terms and the definitions to you. You have  
22 those.

23 These are the constructions that I have determined,  
24 and it is the construction that you will have to apply in  
25 trying this case. They are there for your reference. You

1 will hear about them during the process of the trial, and you  
2 will see the various words that have been defined and  
3 construed by the Court with regard to the claims.

4 This chart, along with everything else that's in  
5 your juror notebooks, will go with you into the jury room  
6 during your deliberations.

7 Again, if you're feeling a little overwhelmed, let  
8 me assure you, this will become clearer as we go through the  
9 evidence and the trial takes form and shape.

10 You're going to hear a lot of evidence through  
11 witnesses in this trial, Ladies and Gentlemen. I want you to  
12 pay careful attention to the testimony of all the witnesses,  
13 and I want you to keep an open mind and not decide any issues  
14 until you've heard all the evidence from all of the  
15 witnesses.

16 Some of the witnesses that will testify in this  
17 case will be designated as expert witnesses. When persons  
18 with special training and experience in the field of  
19 technology at issue in the patents can offer testimony in the  
20 form of opinions to assist the jury, they are called expert  
21 witnesses.

22 It is up to you to determine whether to believe and  
23 accept the opinions of the expert witnesses, just like it is  
24 up to you to decide whether to accept any of the testimony of  
25 any of the witnesses in this case.

1           You are not only the sole judges of the facts, you  
2 are the sole judges of the believability and the credibility  
3 of each and every of the witnesses. It will be up to you the  
4 jury to decide what weight, if any, you want to give to all  
5 of the evidence in this case, including all of the testimony  
6 of all of the witnesses.

7           Your duty in this case is to decide the facts from  
8 the evidence in this case. That's your job and your job  
9 alone.

10           Your second job is to apply the law as I give it to  
11 you to those facts. You must follow these instructions from  
12 the Court, even if you personally would disagree with them.  
13 Each of the instructions is important, and you must follow  
14 them all.

15           You must perform your duty as jurors fairly and  
16 impartially. Do not allow sympathy, prejudice, fear, or  
17 public opinion to influence you.

18           Nothing I say now and nothing I will say or do  
19 during the trial is meant to indicate any opinion on my part  
20 about what the facts are or what your verdict should be. You  
21 the jury, again, Ladies and Gentlemen, are the sole judges of  
22 the facts in this case.

23           Now, as I mentioned, we're going to have opening  
24 statements from the attorneys in just a few minutes, but  
25 before we do that, I want to give you a brief roadmap of how

1 the trial is going to be structured before we get on to the  
2 opening statements.

3 After the opening statements from both sides, the  
4 Plaintiff, Smartflash, will present its evidence to support  
5 its contentions that some of the claims of the  
6 patents-in-suit have been and continue to be infringed by the  
7 Defendant, Apple.

8 To prove infringement of any claim, Smartflash must  
9 persuade you that it is more likely true than not true that  
10 Apple has infringed that claim by a preponderance of the  
11 evidence.

12 After Smartflash has presented all of its evidence,  
13 it will rest its case. Then Apple will present its evidence  
14 that the asserted claims of the patents-in-suit are invalid.

15 To prove invalidity of any claim, Apple must  
16 persuade you by clear and convincing evidence that the claim  
17 is invalid.

18 In addition to presenting evidence of invalidity,  
19 Apple in its case will put on evidence regarding Smartflash's  
20 proof of infringement and damages.

21 Apple will then rest.

22 After Apple, the Defendant, has rested, then the  
23 Plaintiff Smartflash will have the opportunity to respond to  
24 Apple's evidence by putting on what are called rebuttal  
25 witnesses or rebuttal evidence as to infringement and

1 damages. That's referred to as the rebuttal case.

2 After Smartflash has put on its rebuttal case, if  
3 it chooses to do so -- it is their option -- then both sides  
4 will close, subject to final instructions from the Court and  
5 closing arguments.

6 At that point, you will have heard all the evidence  
7 in the case. I will then proceed to give you additional  
8 final instructions which you must follow, and you will hear  
9 closing arguments from both sides in the case.

10 After the lawyers present their closing arguments,  
11 then I will direct that you retire to the jury room,  
12 deliberate, and answer the questions in the verdict form.

13 Those answers to those questions in the verdict  
14 form will constitute your verdict in this case. And as I  
15 say, the answers to those questions must be unanimous.

16 This concludes my opening instructions to you. At  
17 this time, we will now hear opening statements for counsel  
18 for each of the parties.

19 Plaintiff Smartflash may proceed to offer its  
20 opening statement.

21 MR. CALDWELL: Thank you, Your Honor.

22 THE COURT: Would you like a warning on your time,  
23 counsel?

24 MR. CALDWELL: Yes, Your Honor. I would like a  
25 five-minute warning.

1 THE COURT: All right. You may proceed.

2 MR. CALDWELL: May it please the Court.

3 Ladies and Gentlemen, shortly you will more  
4 formally meet Mr. Patrick Racz. He's a man who has a  
5 beautiful and creative mind, and to date, he has refused to  
6 let others dictate his fate.

7 I am Brad Caldwell, and I'm proud to represent  
8 Mr. Racz and Smartflash.

9 What the evidence will show is an extraordinary  
10 story of innovation, risk, struggle, a lot of challenges  
11 along the way that brings us to this courtroom where Mr. Racz  
12 has a chance for redemption.

13 THE COURT: Counsel, either speak up or pull the  
14 microphone closer, please.

15 MR. CALDWELL: Thank you, Your Honor.

16 THE COURT: Thank you.

17 MR. CALDWELL: Now, Mr. Racz took a very unlikely  
18 path to this courtroom. He grew up on a farm in the Island  
19 of Jersey, which is a small island south of England in the  
20 English Channel.

21 He actually left high school around what we would  
22 call eighth grade and worked studying commercial horticulture  
23 and leather working.

24 But not long thereafter, he moved over to London,  
25 got involved in early PCs, and was a guy who was also looking

1 for the problem to be solved or great market opportunities.

2 Early on, Mr. Racz saw a market opportunity,  
3 believe it or not, for water filters. He'll explain all that  
4 later; but in that process, he saw a problem with water  
5 filters, invented a new design of a faucet that actually  
6 revolutionized faucets. And he got his first patent for  
7 that.

8 After the examiner studied it, he got patents all  
9 around the world. And he learned a lot from that because it  
10 was of enormous commercial significance to his business.

11 But shortly thereafter, I guess maybe about 10  
12 years thereafter, Mr. Racz saw a new market opportunity, one  
13 that was worldwide. He started studying on the Internet, but  
14 it wasn't just the Internet.

15 In a moment of true serendipity, Mr. Racz became  
16 very close friends with two extremely high-up executives in  
17 the music industry. He'll explain all about that when he  
18 takes the stand. But just through a random act of kindness,  
19 he got introduced to a different circle of people that would  
20 really change his life.

21 Now, let's cast our minds back to 1999. Remember  
22 when phones looked like this? And they were really good, but  
23 pretty much at one thing, and that was making phone calls.

24 Technologically, a lot of us were concerned about  
25 things, but the big thing we were concerned about that year



1 was the Y2K bug, bank accounts going to zero and the traffic  
2 lights stop working.

3 Mr. Racz was interested in solving problems on the  
4 Internet, and particularly problems that involve music. And  
5 he saw something. What's one of the world's first MP3  
6 players? A music player where you didn't have to have a CD  
7 or a cassette to carry it with you. And it was really cool  
8 and people liked it, but it was hard to use and it came with  
9 a real big problem that Mr. Racz saw.

10 The problem was it was just too easy to kind of  
11 steal the digital data that it used, and he saw that this was  
12 going to be a big problem.

13 Now, I'm not going to stand here and say Mr. Racz  
14 was the only person who saw that problem. Several others,  
15 smart folks around the world, saw the problems, too. And  
16 different people set off working on the problem. Other  
17 people had solutions. They were complicated, and they didn't  
18 really solve the true problem.

19 Mr. Racz saw the issue differently. It wasn't just  
20 about making it harder to steal content. It was about making  
21 it easier to be honest so that people who were willing to  
22 pay, would. And this created market opportunities. With  
23 that insight, Mr. Racz had his invention.

24 Now, first, Mr. Racz realized that you'd have  
25 content -- digital content. It could be a game. It could be

1 a computer program. It could be music or movies, but you  
2 needed to secure that content with rules. And you would keep  
3 that content that's secured by rules on a device. But also,  
4 you needed payment data to make it easy for people to legally  
5 buy their content.

6 And instead of complicated forms and filling out  
7 credit card information and detailed billing information,  
8 Mr. Racz realized you could have a simple proxy for that,  
9 something that's linked back to more complicated billing  
10 information so that it would be easier, when combined on one  
11 device, for people to legally purchase content. In other  
12 words, a way to keep honest people honest because you gave  
13 them an alternative that's as easy as it was just to go  
14 steal.

15 And I'm not trying to oversimplify the invention.  
16 Judge Gilstrap told you that there are the claims of the  
17 patent, and they have a variety of elements, and we're going  
18 to go through these in this case. You'll get your fill of  
19 it. I'm not trying to oversimplify. I just want you to  
20 understand, the evidence will show that this insight was  
21 huge.

22 Now, Mr. Racz thought back to his patent  
23 experiences and how that had been so critical to his  
24 business, and he went to the patent lawyer he was buddies  
25 with and submitted the following in 1999. That drawing right

1     there, he will tell you, is a hand sketch he did before he  
2     went down to his patent examiner -- or his patent attorney,  
3     excuse me.

4             Understand that this was in 1999, years before  
5     Apple had even the first iPod that was submitted to the  
6     United Kingdom's Patent Office, which is in a cooperative  
7     treatise with the United States.

8             Mr. Racz didn't stop at starting -- he did not stop  
9     at just filing his patent. He started a business, and he  
10    hired other technical help, including a gentleman named  
11    Hermen Hulst. Mr. Hulst and Mr. Racz contributed more ideas,  
12    and they went back to their patent lawyers and submitted even  
13    more information to the Patent Office.

14            They retained a design firm to help them design  
15    what their product would look like. They retained a  
16    technology partner that would help them build it. And they  
17    began developing their product and pouring everything they  
18    had in it, all their money, including, frankly, quite a lot  
19    of money Mr. Racz had made off of his faucet invention, and  
20    all their time. They poured all that into the company.

21            They were getting recognition and press around the  
22    world; and, in fact, they even had sponsorship and marketing  
23    deals with Disney, Paramount for the Star Trek brand, and  
24    Britney Spears. This isn't the -- this year -- I mean, in  
25    2001, they got a sponsorship deal with Britney Spears.

1           Mr. Racz will tell you about all that. It seemed  
2 like the world was their oyster, but the good fortune was  
3 short-lived.

4           Mr. Racz caught his business partner in the  
5 engineering firm passing off his invention as their own.  
6 They would make presentations and show it to other people and  
7 act like it was theirs. And he's a trusting guy, and he  
8 forgave them at first, but it just happened again.

9           And then eventually, even though he'd like to say  
10 enough is enough, he really didn't have a choice because he  
11 put in all the money that he had earned. He didn't have his  
12 money anymore; but in reliance on his partner, he put in all  
13 his money.

14           And then eventually just -- the relationship just  
15 got to where it couldn't continue. They pulled out, cut the  
16 cord, and left Mr. Racz -- Mr. Racz in the lurch.

17           But fortunately, you know, he -- he thought he  
18 still had products he could go sell, but the problem was  
19 there are some other events that he's going to tell you about  
20 that really just changed the course of his business and he  
21 started a descent.

22           His company eventually went bankrupt. He  
23 personally had a mountain of debt from paying the salaries of  
24 his employees and other things that he was footing on his  
25 own.

1           And, frankly, the once millionaire was broke and  
2           facing depression. But that's not where the story ends.  
3           Mr. Racz always remained committed. He remained determined.

4           Even though he faced his own demons in this own  
5           process and through the help of friends and just, honestly,  
6           his own relent -- relentlessness, you will hear that about  
7           eight years after he filed it, the United States Patent and  
8           Trademark Office awarded him the first patent, the '720  
9           patent.

10           And the seal on the front cover of the '720 patent  
11           means that the United States Patent Office and its examiners  
12           have studied this patent, scrutinized it to make sure it  
13           meets the requirements of patentability and determined that  
14           he should be awarded a patent. That gave Mr. Racz a new  
15           lease on life.

16           But he still wasn't out of the woods in terms of  
17           his finances, the stability of his family, and other people  
18           recognized this. In fact, a variety of people tried to take  
19           advantage of him now that he had this property right in hand.  
20           But he had learned a lot about choosing partners.

21           Mr. Racz will explain to you that he eventually, a  
22           few years later in 2010, finally met a partner he believed in  
23           and could trust, a man by the name of Monty Koppel. And Mr.  
24           Koppel is a wealthy, older businessman who referred Mr. Racz  
25           to his family's investment company and then became his angel

1 investor, gave him some funds to continue working on the  
2 patent, got him and his family stable.

3 Mr. Racz always believed he had contributed more  
4 inventions than just those covered by the first patent,  
5 including handheld multi-media terminals with wireless  
6 features and the ability to download applications and games  
7 and music and movies. And he was right.

8 It took until 2012, but the United States Patent  
9 and Trademark Office awarded Mr. Racz these two patents in  
10 2012.

11 Now, over the course of all those years, the  
12 landscape had changed. His business partner wasn't doing  
13 that, and what had happened was into the void where he should  
14 have been with his business partner, Apple had stepped into  
15 that void by 2012. And they were doing exactly what he had  
16 disclosed and claimed in his patents with a product that was  
17 secure, easy, and elegant, just like he described.

18 Apple infringes with the iPhone, the iPad, and the  
19 iPod Touch. What the evidence will show in this case is not  
20 only do they infringe, but they build those products and  
21 import them. They mark them up with a huge profit, sell them  
22 at a high price, and they sell a boatload of them.

23 In fact, you'll hear that of infringing products,  
24 Apple has sold -- I'm talking about devices. Not money.  
25 Devices. They've sold about 365 million of them. Just when

1 you look at money that's come in because of people who bought  
2 it for the invention, it's tens of billions of dollars.

3 A United States patent is an important U.S.  
4 property right. To boil it down, Apple was trespassing on  
5 the property and won't pay.

6 And it's ironic that we're here on President's Day.  
7 I agree with His Honor that you're engaging in the second  
8 highest form of service to the country. But it's ironic that  
9 it's President's Day because one of the last things that  
10 President Lincoln did before swearing in and taking the oath  
11 of office was to represent a patent owner in a patent case in  
12 his law practice.

13 Now, part of being an attorney on a case like this  
14 is we will help you see the evidence and help present it.  
15 And we're going to prove to you that Apple infringes, and  
16 you're not going to have to take my word for it. To prove to  
17 you that Apple infringes, I'm going to present Dr. Mark  
18 Jones.

19 Dr. Jones, please stand. Thank you.

20 Dr. Jones is a long-time electrical and computer  
21 engineering professor at Virginia Tech.

22 Now, Dr. Jones has been able to see all of Apple's  
23 secret programming code that they keep back at headquarters  
24 and their technical documents and the sworn testimony of  
25 their engineers. And he studied it for a long time and he

1 wrote a report. And he's going to go through and explain his  
2 methodology for you, explain the evidence, and he's going to  
3 explain to you how Apple infringes, going through those  
4 claims that Judge Gilstrap said are the centerpiece of a  
5 patent trial.

6 After his presentation, if you believe that Apple  
7 infringes, as Judge Gilstrap mentioned, the jury will be  
8 asked to award a reasonable royalty. And that's not  
9 necessarily a term that all of us are familiar with, but  
10 you're going to hear a lot about it in this case.

11 What's shown on the screen is the law from the  
12 United States Code regarding a reasonable royalty. And what  
13 it says is the Court shall award the claimant damages  
14 adequate to compensate for the infringement, but in no event  
15 less than a reasonable royalty for the use made of the  
16 invention by the infringer.

17 And you may wonder how do you go about assessing  
18 that? Well, you will also hear from another person,  
19 Dr. William Wecker.

20 Dr. Wecker, if you would, would you stand up and  
21 move forward a little just so that you're not obstructed  
22 there? Thank you, sir. Thank you, sir.

23 And you will also hear from another gentleman,  
24 Mr. Robert Mills. Thank you.

25 Dr. Wecker has a Ph.D. in applied mathematics



1 focusing on statistics. Mr. Mills has about two decades of  
2 experience in economics valuing property like this.

3 Dr. Wecker will explain to you that he has  
4 performed a survey to analyze certain values that are  
5 applicable to this case. And the first thing you have to  
6 figure out is what's the use made of the invention by the  
7 infringer?

8 THE COURT: Five minutes remaining, counsel.

9 MR. CALDWELL: Thank you, Your Honor.

10 Now, what Dr. Wecker will show you is that 23  
11 percent of the folks that bought the accused products bought  
12 them for the accused features. Mr. Mills, the economist, has  
13 had access to Apple's secret financial documents, their  
14 profit margins. He has access to the money that they bring  
15 in and their own surveys, and he will explain to you that  
16 Apple has brought in about 43.4 billion from the 23 percent  
17 of people who bought the device for the infringing features.

18 Dr. Wecker found out some other information, too,  
19 including that if Apple were to try and change the way their  
20 software worked a little bit so that it didn't infringe,  
21 people would just walk away in droves. The profits they  
22 would lose -- even if it's mostly the same device that they  
23 take away some of these features, the profits they would lose  
24 are in the billions -- profits.

25 Now, using that information and other information

1 that Mr. Mills will explain to you, he was able to determine  
2 that a reasonable royalty in this case is a little less than  
3 2 percent, and he'll go through his methodology.

4 But when you focus just on the money that came into  
5 Apple from people who bought for this feature, and you look  
6 at a reasonable royalty, because you have to award, if you  
7 find infringement, an amount no less than a reasonable  
8 royalty. That's in the law. That amount is where 852  
9 million comes in. Mr. Mims and Dr. Wecker will explain all  
10 this.

11 Now, I suspect that you will hear a variety of  
12 arguments from Apple. They'll say, well, we don't practice  
13 the patents. And, respectfully, we'll disagree, and  
14 Dr. Jones will explain why they do. And, remember, it's our  
15 burden to show you, it's more likely than not that they  
16 infringe, and we will.

17 Apple will then say if you don't buy that, we don't  
18 infringe. That's okay because other people that were out  
19 there before did the same thing that's in your patent. Even  
20 though your patent was issued, other people did the same  
21 thing. And you should take the patents away. And they're  
22 supposed to prove that to you by a clear and convincing  
23 evidence. And Dr. Jones will explain in our rebuttal case  
24 why they've not done so.

25 The truth is that the prior art, what the others

1 were doing, was bad, was complicated, and it's not Mr. Racz's  
2 invention. Apple chose to use a different system, and that  
3 system that they've chosen to use, meets the claims of  
4 Mr. Racz's patent. Remember, for direct infringement, it  
5 does not matter whether Apple realized they were infringing  
6 when they started. Do they meet the claims? That's the  
7 question for direct infringement.

8 But if at the end you don't buy that Apple doesn't  
9 infringe and you don't buy that the patents are invalid,  
10 Apple will say, that's okay. These features are not  
11 valuable, and they will probably suggest to you a knee-jerk  
12 reaction because the number is big. And it's true that most  
13 of us don't -- outside Apple don't deal with numbers that  
14 large on a day-to-day basis.

15 But, remember, you've been instructed you will hear  
16 the evidence and decide on that. And the evidence will show  
17 that that amount is actually a tiny fraction of the money  
18 that was associated to it.

19 You know, on behalf of Mr. Racz and Smartflash, I  
20 thank you very much for your service. You really do have an  
21 important job, and fate has brought us here this day. We  
22 look forward to presenting you the evidence. Thank you.

23 THE COURT: All right. The Defendant may now  
24 present its opening statement.

25 MR. BATCHELDER: Thank you, Your Honor. I'd like a

1 five-minute warning.

2 THE COURT: All right.

3 MR. BATCHELDER: Thank you, sir.

4 THE COURT: You may proceed, counsel.

5 MR. BATCHELDER: Thank you, Your Honor.

6 Ladies and Gentlemen, good afternoon. My name is  
7 Jim Batchelder, and I represent Apple in these proceedings.  
8 And it's now time for me to share Apple's perspective on this  
9 case.

10 And let me just be clear at the outset, Apple sees  
11 this case very differently than the view that you just heard.

12 The four claims -- patent claims in this case are  
13 basically about one way to pay for protected content, like  
14 music or movies that are sold over the Internet.

15 Well, Apple invented its own two systems and built  
16 them from scratch that protect content and then arrange for  
17 that content to be paid for so that the artists, like  
18 musicians can get their fair share.

19 You may want to jot down in your notebooks the  
20 names of those two systems because they'll be very important  
21 here. The first one is called FairPlay, and the second is  
22 called the iTunes Store. And those systems are very  
23 important, because as you'll see in those systems, content  
24 gets protected and then paid for in a way that's not just  
25 different but better than the way that these patents say to

1 do it.

2           The name of the man who leads the engineering team  
3 for the FairPlay system that I mentioned is Augustin  
4 Farrugia, and we'll put his picture up here. And Apple's  
5 bringing him to Tyler so you can hear from him directly.  
6 He's run this team for more than a decade.

7           Apple's also bringing to Tyler two other engineers  
8 who have run the iTunes Store essentially since it began.  
9 One of them is here, Mr. Max Muller.

10           If you'll stand, please, sir?

11           And Mr. Muller will be with us throughout the  
12 trial. And he was Engineer No. 1 on the iTunes Store,  
13 building it from scratch with a great team of engineering  
14 colleagues.

15           You'll also hear from Payam Mirrashidi who also was  
16 working shoulder-to-shoulder with Mr. Muller from the start  
17 in building the iTunes Store.

18           We've even said to the Plaintiffs here that they  
19 can call these witnesses in their case, Mr. Muller,  
20 Mr. Farrugia. We want these folks to speak to you as soon as  
21 possible, because what they're going to tell you is they're  
22 going to describe the incredibly hard work that went into  
23 building the iTunes Store and the FairPlay system. They're  
24 going to talk about how the products work.

25           And, again, what you'll learn at the end of the day

1 is these things pay for protected content in a way that's not  
2 just different, but better than the way the patents say to do  
3 it. And that will be very clear.

4 His Honor instructed you just now that to infringe  
5 a patent claim -- I'm just going to read his words. I wrote  
6 them down as he was speaking -- the -- the accused product  
7 must include each and every limitation of a particular claim.

8 So if a given patent claim, for example, has 10  
9 limitations or requirements and you practice 1 through 9 but  
10 not 10, you do not infringe. Period. End of story.

11 I'll give you one example now of something that's  
12 required by these patent claims that isn't done by the  
13 accused products. The patent claims say that the device --  
14 that the end user has to have something called payment data  
15 stored on it. And they say that, for example, if you want to  
16 buy something, like a song, you need to send that payment  
17 data, like a credit card number, you just send it to the  
18 seller and the seller doesn't give you content until it looks  
19 at that credit card number, validates it, and then it will  
20 send your song.

21 Well, Apple's system works better and differently.  
22 Under Apple's system, the iPhone, you don't store people's  
23 credit card numbers on the iPhone. When someone logs in and  
24 sets up an iTunes's account, they provide their credit card  
25 one time and then that number is stored at Apple on a very

1 secure server to protect it, not on this device.

2 And then when you want to buy a song after you've  
3 created that account, you don't send your credit card number  
4 over the Internet every time, you just send your log-in  
5 information.

6 Now, why does Apple do it that way? Well, if a  
7 credit card number were stored on this device and someone  
8 stole it, they could hack your credit card number. And if  
9 every time you wanted to buy a song off of iTunes you had to  
10 send your credit card number over the Internet, they could  
11 hack it there, too.

12 Apple's system protects that credit card number on  
13 a very secure server, and it does so to protect its customer  
14 from identity theft and credit card theft. Apple's system is  
15 better, and it's certainly different. It doesn't practice  
16 what the claims here require.

17 That brings us to a theme that you'll see over and  
18 over again -- that is, Plaintiffs in this case ignoring their  
19 own documents that were created before this lawsuit was  
20 planned -- that is, before they were motivated to write  
21 things down that would help them sue someone.

22 You'll see, for example, some documents in 2009  
23 reflecting that Mr. Racz and others that he reached out to in  
24 the industry, experts even, they understood that Apple didn't  
25 infringe. They're going to set aside those documents now and

1 ask you to -- to ignore them, but those documents speak the  
2 truth. So that -- that's Hole No. 1 in -- in Plaintiff's  
3 case.

4 The accused Apple products, the iPhone, the iPad,  
5 they are different, different than what these patent claims  
6 require. They pay for protected content in a different and  
7 better way.

8 Hole No. 2 in Plaintiff's case is that Mr. Racz  
9 told the United States Patent and Trademark Office that he  
10 was the first to think of this one way of paying for  
11 protected content, but he just plain wasn't.

12 To help understand that, that is, how that came to  
13 be, it's important to remember what was happening in this  
14 industry. I'll call it the content distribution industry.  
15 It's a mouthful. I know.

16 But, you remember back in the '70s -- many of you  
17 will remember -- that music was sold on records. And records  
18 weren't particularly easy to copy, so piracy in those days  
19 was not so commonplace.

20 Well, some things started to happen around the  
21 mid-1990s that were improvements in the industry so they  
22 created some opportunities; but at the same time, they  
23 created some real challenges.

24 So for one thing, music went digital. Instead of  
25 being on records, it was on CDs, and more and more American



1 households had CD players. Well, that was neat and good. It  
2 also meant that with one touch of a button, someone could  
3 burn a copy of a CD and basically steal the artist's music.

4 Another advancement in the industry is that music  
5 could easily and quickly be sent over the Internet by the  
6 mid-1990s. Before that time, it took a long time, often  
7 hours or more, to download a single album off of the  
8 Internet. But by mid-1990s, you could do it very quickly.

9 And then also the memories, the -- the stuff in  
10 these devices that store data got better and better and  
11 cheaper and cheaper. So you could, on a single device, store  
12 a lot of content, even perhaps someone's entire music  
13 library.

14 So that was all happening in the mid-1990s. And as  
15 you can imagine, given that that was happening, engineers  
16 everywhere were thinking about, writing about, talking about,  
17 how do we set up a system where content like music or movies  
18 can be sold over the Internet, because it can be sent so  
19 quickly now, but protected from being pirated?

20 And what we'll show you is that this was a very  
21 crowded field. Again, engineers all over the consumer  
22 electronics industry from -- from the world's top companies  
23 were thinking about this; they were writing about it; they  
24 were publishing about it.

25 One of them built a system about it. They actually

1 did it. Some submitted patent applications that described  
2 ways to do it. And what we'll show you, as this case  
3 unfolds, is that those really smart people and motivated  
4 people thought of a lot of different ways to do this, and one  
5 of them was the very way that Mr. Racz came along later and  
6 told the U.S. Patent Office he invented when he just hadn't.

7 Now, you must be wondering, why would Mr. Racz have  
8 done that? Why would he have told the U.S. Patent Office  
9 that he invented this thing first when these other engineers  
10 were writing about it and publishing documents to show that  
11 this idea had already been thought of?

12 Well, answer is simple. He didn't know. He didn't  
13 know, because he was not an expert in this space. He did not  
14 have background in this space. He didn't work in this field.  
15 The other folks we've been talking about, these other  
16 engineers, I mean, because they're engineers in computers and  
17 electronics, they devoted their lives in both school and  
18 career to studying these fields so they could add value.

19 They had expertise. Mr. Racz simply hadn't done  
20 that.

21 So, again, we come back to that idea of Plaintiffs  
22 ignoring their own documents. There's a very good example  
23 from 2008 where Mr. Racz reached out to a company called  
24 Intertrust. And that's another name you may want to jot down  
25 in your notebooks. It turns out to be particularly important

1 in this case.

2 Intertrust was an expert in this space, in  
3 protecting content and arranging for it to be sold over the  
4 Internet. And Mr. Racz reached out to them, and in so many  
5 words, he said: You know, I've got this neat thing, this new  
6 idea, I think, and I want you to take a look at my patent and  
7 tell me what you think. I want you to invest.

8 And the way that Intertrust responded was very  
9 telling.

10 Can we see that, please?

11 As you can see, they said: Our guys were pretty  
12 thorough in their investigation. Their feeling was that the  
13 claims were broad but that there was generally little that  
14 gave highly significant or distinctive advances over any  
15 prior art.

16 Well, what is prior art? His Honor described it,  
17 but that term "prior" is a good clue. It means what came  
18 before. What came before Mr. Racz came and claimed to have  
19 invented something?

20 Intertrust was the expert. He reached out to them,  
21 and they said: There doesn't seem to be much here. The  
22 prior art really covered it.

23 And what prior art are we talking about? We're  
24 talking about some of the top engineering firms in the  
25 industry. And we'll show it through expert testimony.

1 IBM, Sun Microsystems, Intertrust itself described how to do  
2 this; Sony, Xerox.

3 Again, some of the top companies in the engineering  
4 space in the U.S. and in the world had already done what  
5 Mr. Racz came along later and told the U.S. Patent Office  
6 that he had invented first.

7 Given that background, it won't surprise you to  
8 learn then what happened when Mr. Racz decided to start his  
9 own company to commercialize what he said he had invented.  
10 And that company was called Internet Plc.

11 And they chose to embody Mr. Racz's so-called  
12 invention through something called a smart card. It looked  
13 something like this. It was a credit card size piece of  
14 plastic that had a computer chip on it. He said it was an  
15 embodiment of what he had invented.

16 And the evidence will show that the reason Mr. Racz  
17 decided to commercialize what he said he'd invented using a  
18 card and not a smartphone, for example, was that he thought  
19 it would be easier.

20 Well, he was right about that much. It's a lot  
21 easier to make a card than to make a world-class family of  
22 products like iPhones and iPads that just pack a wallop of  
23 value for customers that use them. It's a lot easier.

24 But, you know, we teach our children that there are  
25 no shortcuts in life, and this case is no exception. Yeah,

1 it was easier to make a card, but even though he paid big  
2 names in the U.S., like Britney Spears, Disney, Star Trek for  
3 the right to use their names to market these cards, and even  
4 though he had a background in marketing, it just -- it just  
5 doesn't take off. Customers just weren't interested. And  
6 it's not surprising.

7 So that brings us to Hole No. 3 in Plaintiff's  
8 case. And, again, it's a good example of Plaintiffs ignoring  
9 their own documents.

10 Here we have a lot of documents where Mr. Racz, his  
11 colleagues in the industry, because he reached out to a lot  
12 of people, and these documents speak to what the value of  
13 these patents would have been if they had been valid.

14 And they went on the low end of about maybe \$50,000  
15 to a high end being generous reading them to about  
16 \$4-and-a-half million. Again and again, Mr. Racz, his  
17 colleague, the industry all speaking about this, saying the  
18 value of these patents, if they're valid, would be  
19 \$4-and-a-half million.

20 And now we have Mr. Racz here doing an about-face.  
21 Now he goes from 4-and-a-half million to saying: Give me  
22 \$850 million. \$850 million? That's almost a billion  
23 dollars. That a staggering leap from 4-and-a-half to  
24 \$800 million.

25 It tells you, on the one hand, who can be trusted

1 here and who wants you to get to the right answer. It tells  
2 you, on the other hand, he was looking for an easy payday  
3 that he hasn't earned.

4 If we could quickly put up the graphics that  
5 Smartflash's lawyer used --

6 THE COURT: Five minutes remaining, Counsel.

7 MR. BATCHELDER: I'm sorry, Your Honor?

8 THE COURT: Five minutes remaining.

9 MR. BATCHELDER: Thank you. Appreciate that.

10 If we could look at what he calls Figure 1A on the  
11 right, that's described in the patent, and it's described as  
12 an MP3 player. Well, Mr. Racz is going to admit, when I get  
13 a chance to question him, I hope this afternoon, he didn't  
14 invent MP3 players.

15 And if we could look at the next demonstrative,  
16 this is not a picture from his patent. That's one they  
17 created for this trial to make that thing look more like a  
18 smartphone. He didn't invent the smartphone. He's going to  
19 admit that too.

20 And if you look up at the top at things that they  
21 claim he invented, content -- did he invent content? Content  
22 is just music and movies. Mr. Racz sure didn't invent those.

23 What about rules? He's going to admit he didn't  
24 invent rules in connection with online transactions either.  
25 Didn't invent access rules, didn't invent use rules in

1 connection with selling stuff online.

2 Well, what about payment data? Did he invent that?  
3 Again, he will admit, when I have a chance to question him,  
4 the answer is no. He didn't admit payment data and online  
5 transactions either.

6 All of this was in the prior art. It had already  
7 been thought of. It had already been talked about. It had  
8 been published. There had been a system built to do it. He  
9 didn't invent this idea.

10 So, Ladies and Gentlemen, Plaintiffs simply cannot  
11 overcome the three holes in their case that we've just talked  
12 about.

13 Again, the way that Apple's FairPlay and iTunes  
14 systems protect content and arrange for it to be paid, it's  
15 different, and it's better. It protects artists, and it also  
16 protects consumers from credit card theft and identity theft.  
17 It's a smarter way of doing things that looks out for  
18 everyday people.

19 Number two, this one idea, this one way of paying  
20 for that protected content that Mr. Racz told the Patent  
21 Office he invented first, again, others before him already  
22 had; and he didn't know about it because he just didn't have  
23 a background in this.

24 But we'll prove it to you loud and clear in  
25 black-and-white documents that predate what Mr. Racz calls

1 his eureka moment.

2 And then, third, again, if these patents are valid  
3 and if they're infringed, which they certainly aren't here,  
4 but if they were, their own documents show that \$4-and-a-half  
5 million is a cap in the value of these patents. It's one  
6 idea, one way to pay for data.

7 Let me end, Ladies and Gentlemen, by thanking you  
8 for your service in this case. We very much appreciate your  
9 consideration of your evidence, and we look forward to your  
10 feedback at the end.

11 Thank you.

12 THE COURT: Thank you, Counsel.

13 Ladies and Gentlemen, before the Plaintiff calls  
14 their first witness, we're going to take a short recess.

15 You may leave your notebooks in your chairs, if you  
16 don't want to carry them back into the jury room with you.

17 Don't discuss the case among yourselves while we're  
18 on recess. Use this opportunity to get a drink of water and  
19 stretch your legs.

20 We'll be back in here shortly, and the Plaintiff  
21 will call their first witness at that time.

22 But you're excused for recess at this time.

23 COURT SECURITY OFFICER: All rise for the jury.

24 (Jury out.)

25 THE COURT: All right. The Court stands in recess.



1 (Recess.)

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Be seated, please.

5 All right. Let's bring in the jury, please.

6 COURT SECURITY OFFICER: All rise for the jury.

7 (Jury in.)

8 THE COURT: Please be seated.

9 Before the Plaintiff calls their first witness,  
10 does either party wish to invoke the Rule?

11 MR. WARD: The Plaintiff does, Your Honor.

12 THE COURT: Including or excluding experts,  
13 Mr. Ward?

14 MR. WARD: Excluding experts.

15 THE COURT: All right. The Rule has been invoked.

16 Therefore, unless you are a corporate  
17 representative or an expert witness designated in this case,  
18 if you are not either of those but simply a third-party fact  
19 witness or a fact witness of any kind, then you should excuse  
20 yourself from the courtroom and remain outside the courtroom  
21 until you're brought in to testify. Only corporate  
22 representatives and designated expert witnesses should  
23 remain.

24 (Excluded witnesses leave the courtroom.)

25 THE COURT: All right. Plaintiff, you may call

1 your first witness.

2 MR. CALDWELL: Thank you, Your Honor.

3 The Plaintiff calls Mr. Patrick Racz. And while  
4 Mr. Racz is walking to the witness stand, may I --

5 THE COURT: Before he walks to the witness stand,  
6 he needs to be sworn in.

7 MR. CALDWELL: Perfect.

8 THE COURT: Or what do you have, Counsel?

9 MR. CALDWELL: I was just going to ask permission  
10 to pass a notebook to opposing counsel and take some  
11 materials to the witness stand.

12 THE COURT: You have leave to circulate that while  
13 the witness is sworn.

14 MR. CALDWELL: Thank you, Your Honor.

15 (Witness sworn.)

16 THE COURT: Now if you'll have a seat on the  
17 witness stand, please.

18 All right. Counsel, you may proceed.

19 MR. CALDWELL: Thank you, Your Honor.

20 Would the Court like or the Court Reporter or  
21 anyone like a copy of the witness's witness binder?

22 THE COURT: If you want to pass it up, that's  
23 perfectly fine. If you don't, it's your call.

24 MR. CALDWELL: I'm certainly willing to, just in  
25 case it helps with spellings or anything like that.

1 May I approach, Your Honor?

2 THE COURT: You may.

3 MR. CALDWELL: May it please the Court.

4 THE COURT: Proceed.

5 PATRICK RACZ, PLAINTIFFS' WITNESS, SWORN

6 DIRECT EXAMINATION

7 BY MR. CALDWELL:

8 Q. Would you please introduce yourself to the jury?

9 A. Yes. My name is Patrick Racz.

10 Q. Why are you here, Mr. Racz?

11 A. I'm one of the inventors of the patents-in-suit.

12 Q. What did you invent that is at issue in this case?

13 A. I invented particular devices and methods for combining  
14 payment functionality, secure downloading, storage, and rules  
15 for the use of content on one portable device that you would  
16 carry with you.

17 Q. Could that be a phone or an MP3 player?

18 A. It would include those, sir, yes.

19 Q. Who benefits from your invention, Mr. Racz?

20 A. Content developers, publishers, artists, songwriters,  
21 device manufacturers, and users.

22 Q. We will go through your invention in detail momentarily,  
23 but I'd like to introduce you to the jury.

24 How old a man are you?

25 A. I'm 54 years old.

1 Q. Married?

2 A. I am, sir, yes. Married to Carol. I have two children:  
3 Jake, who is 19, and Luke, who is 14.

4 Q. Where did you grow up, Mr. Racz?

5 A. I grew up on the island of Jersey, which is a small  
6 island in the English channel. I'm not from there  
7 originally. My parents moved there when I was about three  
8 years old to buy a farm, settle down and bring up their  
9 children.

10 Q. Tell me about your educational background. Do you have  
11 a high school or college education?

12 A. No, I don't, sir, no.

13 Q. Why not?

14 A. I actually left home and school at a very early age. It  
15 would be the equivalent of 8th grade here in the United  
16 States.

17 Q. What did you do when you left home?

18 A. I went to live on a neighboring island of Guernsey. I  
19 worked in a commercial greenhouse learning about propagation  
20 and growing plants, a greenhouse nursery.

21 Q. Did you eventually get some college education?

22 A. I did sir, yes. When I returned to Jersey, I attended  
23 Highlands College for horticulture, advanced education. I  
24 learned about commercial horticulture.

25 Q. How were you able to pay for your education, sir?

1 A. I was working part time in my family business. I've  
2 always been interested in making things and building things.  
3 I was working making leather belts, bags, picture frames, and  
4 even growing strawberries.

5 Q. Did you complete your studies at Highlands College?

6 A. I did, sir, yes. I graduated with several certificates  
7 in commercial horticulture. They were HNDs, but here they  
8 would be the equivalent of, I guess, trade certifications.

9 Q. What did you do after finishing at Highlands?

10 A. I went back to work in the family business for a while.

11 Q. Did you eventually move over to the big city?

12 A. I did, yes, sir. In 1994, I moved to London. I got a  
13 job in a thriving business that was involved with early  
14 personal computers.

15 Q. How long were you at that job?

16 A. Approximately two years.

17 Q. Have you ever set up your own business, Mr. Racz?

18 A. I have, yes, several, the first of which was in 1986.

19 It was a company called General Ecology UK Limited.

20 Q. What kind of company was General Ecology UK Limited?

21 A. We were involved in the importation of high-end water  
22 filtration systems for General Ecology, Inc., here in the  
23 United States.

24 Q. What got you thinking about starting a water filtration  
25 company?

1 A. Well, I'd seen some articles in the press that had  
2 dispelled the common myth that London tap water was the  
3 purest in the world. They were explaining that actually --  
4 in actual fact, London tap water was quite heavily polluted  
5 and had been recycled several times, and it was very poor  
6 quality.

7 And I saw that there was going to be a growing market  
8 for water filters. I decided to get into the industry.

9 Q. What was the distribution territory of your company?

10 A. Initially, in the UK, we did very well. We quickly  
11 expanded and went into Europe and then the Middle East and  
12 Africa.

13 Q. Did you turn your business, your experiences at General  
14 Ecology, to a different kind of filter business?

15 A. Yes, I did.

16 Q. Explain that to us, sir.

17 A. I spent quite a bit of time analyzing, you know,  
18 whether -- whether -- what the best prospects were for  
19 selling filters, and it seemed to be kitchens, the kitchen  
20 being the most likely place that someone would install a new  
21 water filter.

22 I spent about six months talking to kitchen designers,  
23 installers about what they didn't -- did like and didn't like  
24 about existing filtration systems. Most of them were quite  
25 critical of the existing TouchFlo carafe faucets that were

1 available at the time, the separate spigot faucets, and I  
2 came up with an inventive way of solving that.

3 Q. Will you teach us what that was?

4 A. Yes. I did it, taking a conventional faucet design, and  
5 then instead of having just hot and cold water, I came up  
6 with a method, a concept of introducing a third waterway and  
7 control mechanism, so you could have hot, cold, and filtered  
8 water through a single fitting, but in such a way that the  
9 filtered water couldn't be cross-contaminated from the hot  
10 and cold supplies.

11 Q. Was your invention successful in terms of being a  
12 business?

13 A. Yes, sir, it was hugely successful. And we are working  
14 with a lot of major kitchen distributors, appliance  
15 distributors, and even the world's largest sink manufacturer,  
16 Franke, who's sold it into 45 countries.

17 Q. Did you apply for a patent on that invention, sir?

18 A. Yes, I did, sir. We applied for patents in the UK,  
19 Europe, and the United States of America.

20 Q. How did you find patent lawyers to help you with that?

21 A. Well, back then, I didn't know much about patents at  
22 all. It was 1989. A good business partner of mine, he knew  
23 a little bit more about it. He hunted around, and he found  
24 Marks & Clerk, who he believed were the right people to go  
25 with, and we went with them.

1 Q. After the Patent Offices looked at your patent  
2 application, were you awarded any patents for the Tri-Flow?

3 A. We were, sir, yes. And we received patents from the UK,  
4 Europe, and the United States of America.

5 Q. Did you build a good relationship with those patent  
6 lawyers in the process?

7 A. I built a very good relationship with them, yes, sir.

8 Q. Did having the patents influence the success of your  
9 business?

10 A. I would say it was essential.

11 Q. Why?

12 A. Well, speaking with companies like Franke, who we were  
13 working with, they said, if we didn't have patents, then the  
14 other companies within the industry would have taken that  
15 same idea and used it themselves. It would have been  
16 difficult for them to have invested and worked with a startup  
17 company of our size.

18 Q. Thank you, sir.

19 Did you eventually end up leaving the Tri-Flow Company  
20 even despite the success?

21 A. I did. I was there for about 10 years. We built it up  
22 into a very successful business. The problem was I was  
23 traveling all the time and probably around 45 countries in  
24 total. I was home for two to three weeks out of four. I was  
25 missing my -- my family a lot.



1           My younger son, Jake, was a toddler, and Carol, I think,  
2           was struggling with me -- without me there, and I decided it  
3           was time to move on and go into something different.

4           Q.    What did you decide to pursue when you left Tri-Flow?

5           A.    I decided to get into the Internet space.

6           Q.    Did you see the Internet as another big opportunity?

7           A.    I did, sir, yes. I saw it as a new frontier. I thought  
8           it was going to be enormous in the same way as I looked to  
9           getting in on the ground floor with the filtration business.

10          Q.    Was there something in particular about the Internet  
11          that stuck out to you?

12          A.    Yes, there was, sir. Content, music in particular, and  
13          MP3.

14          Q.    What is an MP3?

15          A.    An MP3 is a music file where you can take a rip from a  
16          CD, a very small size, and you could then play it on a  
17          portable device, a PC, and you could also send it over the  
18          Internet to other people.

19          Q.    How did you first learn about MP3s?

20          A.    I saw one of the world's first MP3 players. Shortly  
21          after that, I purchased one of these devices, a Rio PMP300,  
22          which was a popular device at the time.

23          Q.    Did you see any problems with that device?

24          A.    I did, sir, yes.

25          Q.    What were those?

1 A. Well, I saw that it was far easier to steal content than  
2 it was to pay for it.

3 Q. Now, how did you get from first selling filters, then  
4 designing faucets, to working in the music industry or having  
5 connections in the music industry?

6 A. Yeah. So a bit of a funny story, actually, sir, all to  
7 do with squatters.

8 Q. What are squatters?

9 A. Well, squatters, at that time in England -- it was a  
10 curious law, but if you left your window open or your door  
11 ajar and the house was unlocked and unoccupied, there was no  
12 one living there, then squatters could just move in and take  
13 up habitation, which sometimes would take two or three years  
14 to evict them. It was a real problem at the time.

15 Q. So how did squatters have anything to do with you  
16 getting an insight into the music business?

17 A. Well, my wife -- that came out of my -- my wife and I  
18 bought an apartment in central London. I came out of it one  
19 day, and I saw that there was a notice on the empty apartment  
20 door next to us that the people hadn't moved in yet. I knew  
21 it was someone claiming squatters rights.

22 So I knocked on the door, and there was no reply. I  
23 went out to the front of the building, looked through the  
24 window, and no one there. So I walked out -- I had gone out  
25 to get new locks, and I waited for them to come back, and I

1 wouldn't let them into the building. My wife called the  
2 police, and they helped send them on their way.

3 Q. Did you ever meet the true owners of that apartment?

4 A. I did, sir, yes.

5 Q. And who were they?

6 A. They were Mike and Joanne McCormack, who were two senior  
7 executives in the music industry, very high up and very well  
8 connected. Mike was the head of A&R, BMG, which was later  
9 bought by Sony. Jo was high up in Virgin Music and signed a  
10 lot of very large bands.

11 We became very close friends. My wife and I are  
12 actually godparents to one of their children. And they  
13 introduced me to a lot of senior people in the music  
14 industry.

15 Q. So what were the fundamental problems you mentioned  
16 earlier with the MP3 player and files?

17 A. Well, it was the fact that it was easier to steal music  
18 than it was to pay for it.

19 Q. Why is that?

20 A. Well, I put it down to accountability, security, and  
21 payment.

22 Q. What do you mean by accountability and security?

23 A. Well, accountability and security in the -- it was very  
24 easy to take music files, to rip them off CDs, and to  
25 distribute them over the Internet, share them with friends

1 where no one was accountable.

2 And security, because there was no effective method for  
3 securing those files onto CDs, which made it very, very  
4 simple for that to take place.

5 Q. Mr. Racz, what was the problem with payment that you  
6 saw?

7 A. Well, the problem with payment was there was no easy way  
8 for paying for content at that time. No good way for paying  
9 for content over the Internet at that time in a secure way,  
10 and the record companies weren't getting paid.

11 So if the record companies weren't getting paid, the  
12 artists, the publishers, and the songwriters weren't getting  
13 paid. And that was going to affect the people that I knew  
14 and good friends in the industry, and that's when I started  
15 coming up with the idea.

16 Q. For time context, when was it that you had this  
17 realization of a problem?

18 A. It was the spring of 1999.

19 Q. Did you ever tell anyone around that time about the  
20 problems that you were foreseeing?

21 A. No. I -- well, I told -- I told the music industry  
22 executives I knew, about the problem they were facing, yes,  
23 sir.

24 Q. Now, Mr. Racz, what was their reaction?

25 A. I would say it was -- it was mixed. There was three

1 different types of reactions.

2 The first one was that some of them didn't even know  
3 what an MP3 was at the time, surprisingly enough.  
4 Others thought it was just a fad. It wouldn't catch on. And  
5 if it did, they would end up controlling it.

6 And a third group were adamant that they would have  
7 nothing to do with the Internet. The senior A&R people  
8 executives couldn't even talk to Internet companies. They  
9 wanted to band the use of music on the Internet.

10 Q. Despite the reactions from those executives, did you  
11 continue thinking about this problem?

12 A. I did, sir, yes.

13 Q. Did the music industry ever make its own attempts at  
14 dealing with the problem?

15 A. Yes, they did. There was a couple of noted attempts  
16 with Press Play and Music.net, but they were abject failures.  
17 They didn't work.

18 Q. Is there a particular moment you can remember when you  
19 saw a solution?

20 A. Yes. I would describe that and have described that as  
21 my eureka moment.

22 Q. Please tell us about your eureka moment.

23 A. Well, I was sitting down at the table I was working  
24 from. I had my StarTAC cell phone in front of me, and that  
25 was one of the very early flip phones. And I realized that

1 that had identification data on it that linked you to the  
2 service provider.

3 I also had one of the first credit cards in Europe that  
4 had a chip on it, and I realized that that had authentication  
5 data for payment functionality.

6 I had my Rio PMP300 player at the time also, and I  
7 recognized that that had more memory than the phone, but it  
8 was really dumb memory. It didn't do anything. There was no  
9 security, and it was the root of the problem.

10 And I just figured out that, well, if I took that device  
11 or a device like it, I increased the memory and made it  
12 smart, and I added the functionality that I had identified on  
13 the cell phone of authenticating you to a network and also  
14 combined that with payment functionality, then I would have  
15 the solution for the music industry.

16 Q. If you combined all that, what would it give you?

17 A. That would give you your -- effectively, the  
18 downloading, the ability to download content, store content,  
19 rules, use data -- use data status, payment functionality,  
20 everything in one place on one portable device you can carry  
21 with you.

22 Q. Did you feel like you were on to something with that  
23 idea, Mr. Racz?

24 A. I very much did, sir, yes.

25 Q. We've talked a lot about music, but would it work for

1 other types of content?

2 A. Absolutely. Digital content could be in the form of  
3 music, movies, games, apps, that sort of -- would also apply  
4 in exactly the same way.

5 Q. Can you show us what one of these devices might look  
6 like?

7 A. Yes, sir, I can.

8 Q. What do we -- I'm sorry, sir.

9 What are we --

10 A. No.

11 Q. What are we seeing here that's on Slide 3?

12 A. Well, this is -- Figure 1A is from -- based on a drawing  
13 from my 1999 GP application of a reader player device.

14 Q. And is this Figure 1 of the patent, the '720 patent  
15 that's at issue in this lawsuit?

16 A. That's correct.

17 Q. And what were you just explaining about the 1999  
18 application?

19 A. I was explaining that that drawing was based from the  
20 original drawing from my 1999 application.

21 Q. Was that drawn before or after Apple had the very first  
22 iPod?

23 A. It was long before, sir. It was about two years before.

24 Q. Was it before or after Apple had the iTunes Store where  
25 you could buy content?

1 A. That came out in 2003, sir. It was four years before  
2 that.

3 Q. Was it before or after when the iPhone came out?

4 A. The iPhone was 2007, sir. It was eight years before  
5 that.

6 Q. Mr. Racz, in this particular drawing, where is the  
7 memory that might store content?

8 A. Well, in this particular embodiment, the memory is  
9 actually stored on a smart card where the card is the data  
10 carrier. And you can see that depicted here on this diagram  
11 on Figure 2.

12 Q. Will you explain to us what we're looking at here as  
13 Figure 2?

14 A. Yes. Figure 2 is a smart card, which has increased  
15 memory, has payment functionality, use rules, and status  
16 data. And that would be inserted into a device such as the  
17 one you saw in Figure 1A.

18 MR. CALDWELL: And for the record, this '720 patent  
19 is Plaintiffs' Exhibit 1.

20 Q. (By Mr. Caldwell) Now, Mr. Racz, how would you download  
21 content onto the card in this particular embodiment?

22 A. Well, in this particular embodiment, you would take the  
23 card, and if you look at the bottom of Figure 3, under Figure  
24 3 where you have A, so Figure 3A, you'll see there that  
25 there's actually a card reader that's connected to the



1 terminal via USB interface.

2 What you would do is you would take that card; you would  
3 slide it into the reader; you would use the terminal to  
4 access the content data that you wanted to download; that  
5 would be downloaded onto the card; and the card could then be  
6 taken out and used in other devices.

7 Q. Can you play content from the data terminal?

8 A. In some cases, but not always. You could have used a  
9 reader player device as the card reader and the access to the  
10 terminal, but in other cases, it would just be a  
11 Smartflash-enabled reader device.

12 Q. Would it be all integrated into one?

13 A. Yes, it could be.

14 Q. So does your invention have to use removable cards, Mr.  
15 Racz?

16 A. Absolutely not, sir.

17 Q. Now, because that came up, what does your patent say  
18 about integrating memory into the device?

19 A. Well, my '720 patent states -- oh, you want to -- sorry.  
20 I can run through this one.

21 Q. And that's my fault. Let me -- I think I skipped over  
22 something, so let's just ask about this. Will you explain to  
23 us how the card embodiment would work?

24 A. Yes. In this particular embodiment, what you would do  
25 is you would slide the card into the device, and you would go

1 into the menu, select your content that you wanted to play.

2 Q. And it was my fault for not doing that.

3 A. That's okay.

4 THE COURT: Let's don't talk about -- let's don't  
5 talk about fault. Let's just ask questions.

6 MR. CALDWELL: Yes, Your Honor. Thank you.

7 Q. (By Mr. Caldwell) Mr. Racz, will you show us what your  
8 patent tells us about whether memory can be integrated all  
9 into one device?

10 A. If you go into the '720 patent, and you'll see there in  
11 the '720 patent, Column 4, Lines 42 to 43, the data carrier  
12 may also be integrated into other apparatus, such as a mobile  
13 communications device.

14 And, again, in the '720 patent, Column 16, Lines 9 to  
15 10, in some embodiments, the data carrier may be integral  
16 with the terminal.

17 Q. Now, how would an integrated device look any different  
18 than a device that used a removable card?

19 A. It could look exactly the same as that device from the  
20 outside, except you wouldn't have the slot for the smart  
21 card.

22 Q. So where would the memory be in that instance?

23 A. The memory would be integrated, hard wired into the  
24 device itself.

25 Q. Mr. Racz, from a user perspective, what does it look

1 like as an example of buying content using a device?

2 A. Well, we can show you that in the next slide. You would  
3 take your -- your handheld device. You would select a  
4 content item. Let's go to games here. If you select games,  
5 it would then give you a subselection menu. We would buy  
6 Zoombots.

7 If you select buy on there, once you press buy, the  
8 device would send payment data to the data supplier payment  
9 validation system. On validation of that data --

10 Q. Well, let me interrupt you, if I can. I'm sorry for  
11 that. But I want to focus on that question. So sorry for  
12 interrupting you.

13 A. Sure.

14 Q. Now, does payment data have to be a credit card number?

15 A. Absolutely not, sir, no.

16 Q. What does your patent say about what payment data might  
17 be if it's not a credit card number?

18 A. Payment data can be user authentication data or  
19 identification data, linking a user to a device onto a card  
20 or a cardholder.

21 MR. BATCHELDER: I'm sorry to interrupt, but I need  
22 to object. This is a construed term by the -- the Court,  
23 payment data.

24 THE COURT: Do you have a response to that  
25 objection?

1 MR. CALDWELL: That sentence was critical to the  
2 outcome. It was the basis for the construction.

3 THE COURT: Well, to the extent we have previously  
4 construed terms, we're going to use those definitions, and  
5 we're not going to go behind them and talk about how those  
6 constructions came about. We're simply going to use the  
7 constructions as the Court has adopted.

8 MR. CALDWELL: Yes, Your Honor.

9 THE COURT: Okay.

10 MR. CALDWELL: And, Your Honor, if we might -- and  
11 I really hate to interrupt, but may we approach on this  
12 issue?

13 THE COURT: Approach the bench.

14 (Bench conference.)

15 THE COURT: So you're saying he's trying to discuss  
16 what led up to the construction?

17 MR. BATCHELDER: Yeah. The payment data is a  
18 construed term. For him to talk about what it means -- if we  
19 put up the Court's construction, if we're going to talk about  
20 what it means.

21 THE COURT: Let me hear a response.

22 MR. CALDWELL: I absolutely love the construction.  
23 The problem is they tried to win this credit card or  
24 something that could be authorized. They tried to win that  
25 in Markman and lost.

1           We even put data in our construction precisely  
2       because of that, and now --

3           THE REPORTER: Judge?

4           THE COURT: You need to speak up.

5           MR. CALDWELL: Okay. And now, even with precisely  
6       our construction -- and theirs required extra stuff, like  
7       authentication and all sorts of other things, was actually  
8       rejected, and now their expert pretends that that's -- this  
9       is inconsistent with the patent, and he's arguing the thing  
10      he lost at construction.

11          THE COURT: Well, we're not going to argue claim  
12      construction. The constructions adopted are the  
13      constructions we're going to use, and we're not going to go  
14      behind them.

15          If he was trying to mischaracterize an earlier  
16      argument, you know, we're not going to open the door and go  
17      back behind the constructions. They are what they are.  
18      How we got there, what -- who argued what to get there, who  
19      now is adopting somebody else's argument and trying to make  
20      it their own, none of that is coming in. We're just going to  
21      use the constructions that are adopted, okay?

22          MR. CALDWELL: Okay.

23          MR. BATCHELDER: Thank you, Your Honor.

24          THE COURT: Thank you.

25          (Bench conference concluded.)

1 THE COURT: All right. Let's proceed.

2 MR. CALDWELL: Thank you, Your Honor.

3 Q. (By Mr. Caldwell) Now, what happens after payment data  
4 is validated, Mr. Racz?

5 A. Well, on receipt -- once the payment data has been  
6 validated, then the data supplier will then send the content  
7 use rules to the device.

8 Q. Are there other steps that would go on behind the scenes  
9 that are not visible on the face to the user?

10 A. Absolutely, sir, yes. There are various steps, but it's  
11 transparent. The user doesn't see them.

12 Q. Now, if the game is downloaded, what happens if the user  
13 picks that game to play?

14 A. Well, when you select play, the device will evaluate the  
15 use rules and the status data to check whether your access is  
16 permitted; and if it is, it will then give you access to that  
17 content.

18 Q. Mr. Racz, can rules be used to prevent things like  
19 piracy; in other words, prevent someone else from copying and  
20 using?

21 A. Yes. Yes, sir. Yes, they can.

22 Q. How would that work?

23 A. Well, it could work, for instance, on a rental of a  
24 movie.

25 Q. Well, before we go there, I want to ask you about copy

1 protection.

2 A. Sure.

3 Q. How can rules be used to implement copy protection if  
4 someone were to copy the content to a different device?

5 A. Well, the rules would prevent another device from using  
6 that and would stop copying or piracy from taking place.

7 Q. So if the -- if the game were copied to a different  
8 device, what would happen?

9 A. Well, then the other device would evaluate the use rules  
10 and status data, would see that it wasn't authorized, and  
11 then access would be denied.

12 Q. Are there other features besides copy protection that  
13 can be implemented using rules?

14 A. Yes, sir.

15 Q. Give us an example, please, sir.

16 A. The one I was giving you earlier would be another  
17 example of, say, renting a movie, and you could rent it for a  
18 specific amount of time or for a specific period of time once  
19 the rental had started.

20 Q. How would a rental work, Mr. Racz?

21 A. It would work in very much the same way that you would  
22 send your payment data to the data supplier. And here we're  
23 selecting the understudy, a movie, and we could select rent  
24 on that.

25 Q. Okay. And what happens if we choose to rent a movie,

1 Mr. Racz?

2 A. Well, then you would have access to that content for a  
3 predetermined time, according to the rules set by the  
4 provider.

5 Q. All right. And if the user attempts to access that  
6 content -- for example, the movie -- within the allowed time  
7 period, what happens?

8 A. Well, then, again, the device would evaluate using the  
9 use rules and status data, if access was permitted; and if it  
10 was, play would commence.

11 Q. And in this example it shows 24 hours. So what happens  
12 if 25 hours had elapsed?

13 A. Well, in that case, then, when the device evaluates the  
14 use rules and status data, would show that you had gone over  
15 the 24-hour limit and rental would have expired, access would  
16 be denied.

17 Q. Thank you, Mr. Racz.

18 Is this purchase and use process simple for users?

19 A. Yes, it's very simple.

20 Q. Is that important?

21 A. Yes, it is, sir.

22 Q. Why is it important?

23 A. Well, it's important --

24 Q. -- to be easy?

25 A. It's important because it -- it gives honest people a



1 simple and easy way to access content and remain honest.

2 Q. Are you able to apply -- to take Apple's information,  
3 their code, and apply it to your patent claims?

4 A. I'm not allowed to look at Apple's secret code and  
5 their -- and confidential information. I can only look at  
6 their devices and available information.

7 Q. Will Dr. Jones be going through that in his  
8 presentation?

9 A. I -- I believe he will, sir, yes.

10 Q. Mr. Racz, did your invention in your mind solve the  
11 problem you had recognized about digital content being easier  
12 to steal than it was to acquire honestly?

13 A. Yes, sir.

14 Q. Did you feel like it would help the digital content  
15 industry grow?

16 A. I -- I felt it would -- it allowed the industry to grow  
17 at a very rapid pace, sir, yes.

18 Q. Why?

19 A. Well, because record companies would have a system that  
20 would able -- allow them to release content in a protected  
21 way with assurance that they were going to get paid.

22 The artists, developers, song writers would also embrace  
23 it because they would know that they were going to get paid  
24 because their content was secure and more people would have  
25 access to it.

1           Device manufacturers would embrace it because if there  
2           was more content and more people buying it, you would sell  
3           more devices, and end users/consumers would benefit because  
4           they would have access to far more content than was  
5           previously available but without stealing it.

6           Q.   Referring back to the conversation you had with music  
7           executives, did those fears of piracy come true?

8           A.   Yes, sir, they did.

9           Q.   Can you give us an example of how?

10          A.   Well, shortly after I came up with the idea, a lot of  
11          people started selling -- started distributing music through  
12          a peer-to-peer network which appeared in June of '99 called  
13          Napster.

14          Q.   Did you take your idea to those patent lawyers that you  
15          knew?

16          A.   I did, sir, yes.

17          Q.   Mr. Racz, what are we looking at here as Plaintiffs'  
18          Exhibit 198?

19          A.   You're looking here at the GB, the original GB  
20          application that I filed in the UK.

21          Q.   Did the Great Britain and -- cooperate with the United  
22          States Patent Office?

23          A.   Yeah. That's a global treaty. It's called a PCT or  
24          patent cooperation treaty which operates through the world of  
25          intellectual property office and you have priority from a GB

1 date in other countries and -- just as you would from the USA  
2 to Europe.

3 Q. Mr. Racz, did you form a company to start developing or  
4 building the idea?

5 A. I did, sir -- actually two companies.

6 Q. What were those two companies?

7 A. The first was Smartflash Limited, which is to hold the  
8 intellectual property, the patents. And the other company  
9 was Internet Plc, which was to develop, manufacture, and  
10 commercialize the invention.

11 Q. In the '99 and early 2000 time frame, approximately how  
12 many employees did you have at Internet Plc and Smartflash?

13 A. Very few. I would say 10 to 20 employees at that time.

14 Q. Are you personally a computer programmer?

15 A. No, I'm not, sir.

16 Q. Did you hire any additional technical help?

17 A. Yes, I did, sir.

18 Q. Who did you hire?

19 A. One of the first people we hired was a gentleman by the  
20 name of Hermen Hulst. He was previously at Philips  
21 Semiconductors, and he had a good understanding and knowledge  
22 on encryption and e-commerce and I felt that he would be a  
23 valuable addition to the team.

24 Q. Is he also named as an inventor on the patents?

25 A. Yes, Mr. Hulst assisted in the development of several

1 new ideas and improvements on the existing ones, and he's  
2 named as a co-inventor on the other patents.

3 Q. Are you and Mr. Hulst still friends?

4 A. Yes, sir, we are.

5 THE COURT: Counsel, approach the bench, please.

6 (Bench conference.)

7 THE COURT: I've been thinking about our last  
8 exchange. I want to clarify something. We're not going to  
9 reargue claim construction. We're not going to raise the  
10 prior arguments. We're not going to go behind the  
11 construction of the terms.

12 But that said, your witnesses are allowed to take  
13 the Court's constructions and testify as to how they would  
14 apply them. So I don't want you to be confused that you  
15 can't touch on the terms at all, but we're going forward,  
16 we're not going backward. But my instruction that we're not  
17 going to reopen claim construction or go behind the  
18 construction adopted, does not preclude you from applying  
19 those through your witnesses. Is that clear?

20 MR. BATCHELDER: Appreciate that, Your Honor.  
21 Understood.

22 MR. CALDWELL: And for -- for the sake of clarity  
23 since we're here, I think that's exactly what we're trying to  
24 do because the Court's construction of that term is data that  
25 can be used for payment or to make a payment. And the issue

1 is Apple's already argued in opening that it has to be the  
2 actual credit card number that was rejected in Markman. And  
3 what I was actually showing is how you use it is, is because  
4 you can set up something with an ID that's actually linked to  
5 the card back at the server.

6 THE COURT: Well, I don't expect either of you to  
7 present the same arguments you present -- presented in your  
8 claim construction, but I don't expect both witnesses for  
9 both sides to take those construed terms and probably tell  
10 two different stories about how they're implemented and  
11 applied.

12 MR. BATCHELDER: To be clear, though, what -- what  
13 he can't do is go back to the specification and say, what --  
14 what light it sheds on the meaning of payment data. That's  
15 already been construed.

16 THE COURT: We're going to talk about application.  
17 We're not going to reopen meaning.

18 MR. BATCHELDER: Exactly. Thank you.

19 MR. CALDWELL: Certainly. I just want to make sure  
20 that what we can do is -- and I think this is what you said  
21 is okay. I want to make sure what we can do is say: What is  
22 one example in which it may be used to make a payment?

23 THE COURT: The witnesses can testify as to how  
24 they would apply the constructions adopted, but we're not  
25 going to reopen the arguments as to how those constructions

1       were arrived at.

2               MR. CALDWELL: Right.

3               MR. BATCHELDER: And I'm just telling you --

4               THE COURT: So we're -- we're prospective. We're  
5 not going to be retrospective.

6               MR. CALDWELL: Okay.

7               THE COURT: I just want to make sure y'all are all  
8 clear on that because after your last trip to the bench, it  
9 did not seem to me we were completely clear. So I looked for  
10 an opportunity to bring you back up here and give you some  
11 more guidance.

12              MR. BATCHELDER: Thank you, sir.

13              (Bench conference concluded.)

14              THE COURT: Let's continue.

15              MR. CALDWELL: Thank you, Your Honor.

16 Q.    (By Mr. Caldwell) Let's pick up right where we were.

17        Are you and Mr. Hulst still friends?

18 A.    Yes, we are, sir. And he's been really supportive over  
19 the last few years.

20 Q.    Mr. Racz, will your co-inventor, Mr. Hulst, be  
21 testifying at this trial?

22 A.    Unfortunately not, sir, no.

23 Q.    Why not?

24 A.    He works for Sony in Amsterdam. He's very senior high  
25 up in the games division, and he won't able to be here, sir.

1 Q. Mr. Racz, do you believe that you have to actually build  
2 your invention in order to get a patent on it?

3 A. No, sir.

4 Q. Did you or the others at Internet Plc have experience  
5 with physically building the kind of devices that you've  
6 talked about?

7 A. No, I had 10 years manufacturing experience. We'd  
8 actually built up a very large plant. We'd expanded into  
9 bathrooms and other areas, but I didn't have any  
10 manufacturing experience in consumer electronics. I realized  
11 that we'd need a -- an EDE, an electronic design engineering  
12 partner, and so we -- we went out and looked for one.

13 Q. Were you able to find any partners?

14 A. I would say, yes, we found two -- two main partners.  
15 One was an electronic design engineering firm based here in  
16 the United States, which is Cadence or Tality, as they were  
17 later renamed. And the other one was a French company called  
18 Gemplus. They were in the hardware/software side.

19 Q. Did you get the sense that your project was important to  
20 Tality and Gemplus?

21 A. Very much so, yes, sir.

22 Q. Who were some of the folks you worked with at Gemplus?

23 A. We were working with all the senior management, a lot of  
24 directors, all the way up to the chairman, founder, and major  
25 shareholder of the company.

1 Q. Did anyone at Gemplus communicate to you that they  
2 believed your idea was important to them?

3 A. Frequently, sir, yes.

4 Q. Mr. Racz, I put up Plaintiffs' Exhibit 194. What is  
5 this document?

6 A. This is a letter from Stephen Landau who was put in  
7 charge of evaluating initially with us and then working with  
8 us on the project. And he was telling me about meetings and  
9 conversations he'd been having with Mark Lassus, who was the  
10 chairman and founder of Gemplus.

11 Q. And what --

12 A. And --

13 Q. I'm sorry. I was just going to -- what was he  
14 explaining about?

15 A. He -- he was explaining that he wanted to join the board  
16 and also wanted to invest in Smartflash and Internet Plc.

17 Q. The chairman of Gemplus did?

18 A. Yes, sir.

19 Q. What about these other folks listed in the middle  
20 paragraph?

21 A. Those were other founders of Gemplus. One of them, I  
22 think, had actually left Gemplus at that time, Gilles  
23 Lisimaque. Another one was Jean-Pierre Gloton, who was  
24 another founder. They were interested in joining the board  
25 as technical advisors and also investing funds in the



1 business.

2 Q. Now, the author of the letter, is that the one -- is  
3 that Steven Landau?

4 A. Yes, sir. Yes.

5 Q. Was Mr. Landau interested in your ideas?

6 A. He actually came and joined our company later, sir, and  
7 came to work for Internet Plc. He left Gemplus.

8 Q. Did you actually go out then and design players?

9 A. Yes, we did, sir.

10 Q. Mr. Racz, I put up some pages from Plaintiffs' Exhibit  
11 141.02. What are we looking at?

12 A. This is one of the reader player designs that we  
13 developed with Tality after they were renamed from Cadence.  
14 This is one of three designs named Sidney, and this  
15 particular one was using a smart card as the data carrier.

16 Q. And, Mr. Racz, what does this -- this drawing represent?

17 A. This is a more advanced version. It was Pablo, and this  
18 had a touch screen interface.

19 Q. Did you ever make models of some of your players beyond  
20 just conceptual drawings?

21 A. Yes. Yes, we did so. Yes, we -- we developed phone  
22 models, which designed to get the form and function, the feel  
23 of the product, an indication of what it would look like in  
24 real life. That's a precursor to prototypes.

25 Q. Mr. Racz, did you ever show these models or those

1 presentations to Gemplus?

2 A. Yes, we shared them with Gemplus.

3 Q. Who was -- you had -- did you tell us there were two  
4 partners that you had?

5 A. Yes, yes.

6 Q. Partner companies? Which was the partner company that  
7 helped you design those drawings?

8 A. That was Cadence who later became known as Tality.

9 Q. And did you and Cadence or Tality take the drawings to  
10 Gemplus?

11 A. Yes, we did, sir.

12 Q. The devices you showed us, did they use swappable memory  
13 cards?

14 A. Yes, they did.

15 Q. Why did your company start designing things it would use  
16 as swappable memory card?

17 A. Because that was the fastest and easiest route to  
18 market, sir.

19 Q. Is it costly to engage in a design process like what  
20 you've described?

21 A. Extremely costly, yes, sir.

22 Q. Mr. Racz, how did you have the money to begin developing  
23 those products?

24 A. I made quite a bit of money from Tri-Flow from my  
25 previous venture. I'd invested myself, and I also got a lot

1 of other investors, including people we mentioned earlier  
2 to -- to come on board, as well.

3 Q. Mr. Racz, how much of your own personal money would you  
4 estimate that you invested?

5 A. Nearly 3 million.

6 Q. Were there other folks that wanted to invest?

7 A. Yes, sir.

8 Q. Approximately how many people invested?

9 A. Well, aside from the founders of Gemplus, I would say  
10 around 20 to 25 individuals and companies.

11 Q. Did the companies prepare any formal paperwork to  
12 present the investment opportunity to potential investors?

13 A. Yes, we did, sir.

14 Q. Mr. Racz, I've put up Plaintiffs' Exhibit 108. What is  
15 this document?

16 A. This is a copy of Chalfont Holdings offering memorandum  
17 which was prepared in association with Werbel-Roth, a  
18 financial securities company in New York.

19 Q. Who is Chalfont Holdings?

20 A. Chalfont was the company that owned Internet Plc and  
21 Smartflash, so the reason it was done in that way is that  
22 funds would be invested into Chalfont and then be distributed  
23 to the two companies in accordance with the budgetary  
24 requirements.

25 Q. Did you envision any alternative ways of bringing your

1 invention to the market other than building the devices  
2 yourself?

3 A. Absolutely we did, sir, yes.

4 Q. And what were those?

5 A. Licensing the technology, sir.

6 Q. What is a license, Mr. Racz?

7 A. A license is where you give a manufacturer or a user the  
8 ability to make your product under license for a royalty  
9 payment.

10 Q. And still in Plaintiffs' Exhibit 108, what do we see on  
11 Page 22 of Plaintiffs' Exhibit 108?

12 A. That's an extract from the offering memorandum, which is  
13 outlining our strategy for licensing the technology that we  
14 were developing.

15 Q. What did your companies determine would be a fair rate  
16 for licensing your invention for a player device?

17 A. We determined a fair rate would be \$4, sir.

18 Q. What kind of devices might be Smartflash-enabled  
19 players?

20 A. MP3 players, mobile phones, PDAs, other such devices.

21 Q. Was Apple in the cell phone or mobile phone business at  
22 that time?

23 A. No. That was six years before they were, sir.

24 Q. And how would this licensing work for a company like  
25 Apple?

1 A. Well, they would take a license, and they would pay a  
2 royalty for each device that they manufactured and sold using  
3 that technology.

4 Q. Mr. Racz, how were things going with Gemplus around this  
5 time in mid-2001?

6 A. Well, we -- we actually ran into a -- a bit of an issue.  
7 They were going very well, and then we stumbled across a bit  
8 of a problem.

9 Q. Remind us what this presentation was. It's 141.002.

10 A. That's a presentation that was developed by Tality for  
11 Internet Plc or in conjunction with Internet Plc for the  
12 reader player devices that they designed.

13 Q. What was the problem you mentioned that you ran into  
14 with Gemplus?

15 A. I was at a meeting in Steven Landau's office. I noticed  
16 on his desk that he had some drawings that looked very  
17 familiar and similar to our own. And when I looked closer, I  
18 picked up the presentation. I was quite shocked.

19 Q. So what presentation are we looking at now, Mr. Racz, as  
20 Plaintiffs' Exhibit 127?

21 A. This is a Gemplus presentation.

22 Q. Were they referring to a device as a Smartflash device?

23 A. No, they weren't, sir.

24 Q. What were they doing?

25 A. What they'd actually done is they'd taken the drawings

1 and they put them into their own presentation. They deleted  
2 the Internet Plc and Tality trademarks and company names and  
3 taken off any references to our own trademarks and replaced  
4 them with this -- I suppose a similar -- similar product and  
5 their own logos and company name.

6 Q. Did it seem to you that Gemplus was trying to claim your  
7 idea as theirs?

8 A. That's exactly what it looked like, sir, yes.

9 Q. Mr. Racz, did you confront Gemplus?

10 A. I did, sir, yes.

11 Q. Tell us about that.

12 A. I -- I confronted Steven Landau about it. I asked him  
13 about it. He insisted that it was -- it wasn't him. I  
14 wanted to believe him. I didn't think Mr. Landau would take  
15 my ideas as his own. He said that he was instructed to  
16 prepare the presentation by Gilles Michel.

17 Q. Were you willing to forgive Gemplus at that time?

18 A. I did so, yes.

19 Q. Mr. Racz -- well, also from the Gemplus presentation at  
20 Plaintiffs' Exhibit 127, what was Gemplus saying also in that  
21 presentation, Mr. Racz?

22 A. They'd taken some words that I used for their  
23 presentation verbatim and put it into there as their own  
24 words. Instead of Smartflash, they put SUMO as the preferred  
25 carrier for music and entertainment and thereafter as the

1 preferred carrier solution for all digital content.

2 Q. Did Gemplus ever come to you and reaffirm their  
3 commitment to work with your company?

4 A. Yes, sir, they did.

5 Q. What are we seeing at Plaintiffs' Exhibit 162, Mr. Racz?

6 A. That's the reaffirmation -- the confirmation from  
7 Gemplus, and there they've used the correct words. They've  
8 taken the opportunity to affirm that commitment. And here  
9 they use the words to help draft Smartflash as the preferred  
10 carrier for digital media.

11 Q. Thank you, sir.

12 Alongside development, did Smartflash look for ways to  
13 market its products?

14 A. Yes, we did, sir. Yes.

15 Q. Okay. Tell us who you partnered with to market.

16 A. Well, the first -- first branded partner we were  
17 actually associated with was Britney Spears.

18 Q. Can you show us that, sir, the reader that you have?

19 A. Yes, sir. Yes. This is -- this is the reader player  
20 device and product that we developed in association with  
21 Britney Spears, yes.

22 Q. Thank you, Mr. Racz.

23 How are y'all able to get an audience with Britney  
24 Spears in order to cut a deal?

25 A. One of my friends knew her manager quite well, and he

1 got me through the door and got the wheels in motion.

2 Q. What was Ms. Spears' status in the music industry at  
3 that time?

4 A. She was huge. She was -- at that time, we're going back  
5 to 2001. She had just released her second album. She was, I  
6 believe, the highest selling or the biggest selling artist in  
7 the world at that time, certainly one of them. She was  
8 enormous, yeah.

9 Q. Besides putting her name on a product, did she do  
10 anything else to help you market?

11 A. Yes, she did, sir. Yes.

12 Q. What was that?

13 A. Well, we were linked into her world tour. We were doing  
14 the European promotional leg of her world tour. When she was  
15 in London, I think it was around July of that year; and she  
16 did a commercial for us in a London taxi promoting  
17 Smartflash, and that was going to be shown at all the  
18 concerts she did.

19 Q. Do you still have that commercial today?

20 A. Yes, we can play it now, sir.

21 MR. CALDWELL: Your Honor, may I play that  
22 commercial? We'll have audio, just so you know.

23 THE COURT: Proceed.

24 (Videoclip played.)

25 Q. (By Mr. Caldwell) When you saw that, did you think



1 things were going pretty well?

2 A. Yes, sir.

3 Q. Were you getting recognition in the press?

4 A. We were, yes. We were getting a lot of attention from  
5 the press online, even doing interviews with the Wall Street  
6 Journal.

7 Q. Mr. Racz, what happened next?

8 A. Well, unfortunately, the tragic events of 9-11 took  
9 place.

10 Q. Making no light whatsoever of those tragic events, it  
11 doesn't equal that, but how did that connect to your  
12 business?

13 A. Well, we were linked into Britney Spears' European tour  
14 as part of her world tour. And quite understandably, she was  
15 worried about flying at the time, and she took the decision  
16 to not fly and to cancel the European tour.

17 Q. Did she keep other concert dates in another part of the  
18 world?

19 A. Yes, she did. She still kept her North American tour;  
20 and that was good for her other partners, so brands like  
21 Pepsi and Kellogg sketches that we were working with, they  
22 were still able to benefit and work with her. But we were  
23 pretty much restricted in the European side. And it really  
24 hurt our -- our small company at the time.

25 Q. After the European tour was canceled, did you still try

1 to do some work with Ms. Spears?

2 A. We did, sir, yes. We -- we -- we continued working with  
3 her.

4 Q. Was that part successful?

5 A. Well, I'd say it was -- it was successful in terms of it  
6 was a fantastic association to have, and it opened a lot of  
7 other doors and validated a lot of what we were doing. So in  
8 that sense, yes, it was; but we didn't have the content, so  
9 we didn't have the content from the tours and we didn't have  
10 the sale from the tours, so it wasn't the success that we  
11 envisioned at the time.

12 Q. But did you still have your partnership with Gemplus to  
13 continue developing the hardware you envisioned?

14 A. Well, un -- unfortunately, we -- we hit a roadblock at  
15 that point, sir.

16 Q. Explain that to us, Mr. Racz.

17 A. Well, shortly after Britney had canceled her tour, I was  
18 in Paris -- would have been October 23rd to the 25th. I was  
19 visiting a trade event called CARTES 2001. Gemplus had a  
20 very large presence there and very large booth in the center  
21 of the hall. I walked out of the booth and was really  
22 shocked to see that they were back to promoting my product as  
23 this SUMO device again.

24 And I -- well, I went up and I confronted the man who  
25 was doing the demonstrations and showing the press and the

1 people that were there. I introduced myself. He knew who I  
2 was immediately. He apologized profusely, said it was all a  
3 misunderstanding, and it would all get resolved.

4 Q. Did you break things off with Gemplus after the second  
5 time?

6 THE COURT: Mr. Caldwell, you're going to need to  
7 speak up so everybody can hear you.

8 MR. CALDWELL: Thank you. Thank you, Your Honor.

9 THE COURT: All right. Let's proceed.

10 Q. (By Mr. Caldwell) Did you break things off with Gemplus  
11 at that point, Mr. Racz?

12 A. No, I -- I couldn't really.

13 Q. Why not?

14 A. Well, as much as I felt betrayed, I wasn't in a position  
15 to. They -- you know, we'd spent a very large amount of our  
16 shareholders' funds at that point. We were developing  
17 additional products. They were our technology partner, and  
18 we were -- thought we were close to the -- you know, the  
19 senior people there. We -- couple of the directors were  
20 working closely with us. I thought I'd be able to turn  
21 things around.

22 Q. Did you still try to work on some additional products  
23 with Gemplus?

24 A. Yes, we do. We continued developing them. We were very  
25 close to launch, and these are two of the products here.

1 Q. Thank you.

2 A. The first one here, this is a product that we developed  
3 with Disney -- the first product we developed with Disney,  
4 which was Treasure Planet reader and card. And the other one  
5 here, this was in association with Paramount Studios with the  
6 launch of their movie Star Trek Nemesis.

7 Q. The products that you've shown us today, do those  
8 products practice the specific patent claim that are at issue  
9 in this case?

10 A. No, they don't, sir. No.

11 Q. Did you have a plan as to how you were going to build up  
12 to other products?

13 A. Yes, sir, we did.

14 Q. Explain that to us.

15 A. Well, we had a phase launch plan in several stages. The  
16 first one we termed Smartflash promo. That was the  
17 production of promotional cards that were given away or what  
18 would be given away in serial packets, multi-packs of Pepsi  
19 in Target stores and the music CDs. The second one we termed  
20 Smartflash Light, Smartflash Fan, and that product had a bit  
21 more functionality to it.

22 Similar to the products I've shown you, you could also  
23 have some digital rights management and payment functionality  
24 involved buying content with the memberships and so on.

25 And the third one was Smartflash Media, and this was far

1 more complete offering. This was including digital rights  
2 management, so you would have rules, storage of content, use  
3 data, and all the functionality we spoke about earlier, on  
4 one integrated device.

5 Q. Mr. Racz, did you describe those phases in a business  
6 plan?

7 A. We did so, yes.

8 Q. What's on the screen is marked Plaintiffs' Exhibit 114.

9 A. This is -- this is from our 606 business plan, final  
10 version, Smartflash Media, unique combination of  
11 authentication, storage, digital rights management, customer  
12 relationship management, and loyalty applications, payment  
13 and Internet/channel access. Smartflash Media permits the  
14 distribution of digital products over the Internet on a  
15 worldwide scale.

16 Q. You said 606. Are you meaning 2006?

17 A. No, Version 606.

18 Q. Approximately when is this dated?

19 A. This would have been in 2002.

20 Q. Did you ever get a chance to complete all those phases  
21 of production?

22 A. No, we -- no, we didn't, sir.

23 Q. What happened to your relationship with Gemplus?

24 A. Well, I would -- they pulled the -- pulled the plug on  
25 us, sir.

1 Q. How did you find out that Gemplus was pulling the plug  
2 on your project?

3 A. I found out from Mark Lassus, from the chairman.

4 Q. Explain that to us.

5 A. Mark Lassus called me one evening from Miami. He had  
6 been at a board meeting, and there was a lot of problem he  
7 was having internally. There were some new shareholders  
8 who -- involved in the company wanted to move the firm and  
9 some of the management and directors that Gemplus had sided  
10 with them against him. He called me after the board meeting,  
11 and he said that he'd been fired from the board. In addition  
12 to that, that they'd called in a loan in connection with his  
13 shares for over a hundred million Euros, similar to, I guess,  
14 the dollar, sir. That he was effectively out.

15 Q. What did you say to him?

16 A. I -- I told him I was shocked. I was really sorry to  
17 hear that. I asked if there was anything I could do to help,  
18 and -- and then he said be careful, you watch your own back  
19 because they're going to come for you. And I -- I asked him  
20 what he meant, and I'll never forget what he said. He  
21 switched it to his native French and he said (speaking  
22 French) and then translated in English, they are very  
23 jealous, they want your technology, but they want you out of  
24 the way. And the implication was that they didn't want me  
25 around because of my association with him.

1 Q. Did they cut you off?

2 MR. BATCHELDER: Your Honor, I object to the  
3 hearsay.

4 THE COURT: Restate your question, counsel.

5 MR. CALDWELL: I'm happy to move on to --

6 THE COURT: Let's move on then.

7 Q. (By Mr. Caldwell) Mr. Racz, did Gemplus cut off the  
8 relationship?

9 A. Yes. I got a call a couple hours afterwards from Gilles  
10 Michel to say that they were unable to continue with the  
11 strategic development agreement with the investment program  
12 and they were no longer able to work with us, but he wouldn't  
13 give a reason why.

14 Q. Did you have any issued patents at that time?

15 A. No, sir.

16 Q. Approximately when did you get that call from Gemplus?

17 A. This would have been around October of 2002.

18 Q. How did it affect your business to not yet have the  
19 patents?

20 A. It was a disaster to us.

21 Q. Mr. Racz, how did you feel when all that happened?

22 A. I'm pretty -- pretty shocked, devastated.

23 Q. What happened with your company after Gemplus broke off  
24 the deal?

25 A. Well, we -- we had to scale back and reduce our plans.

1 We couldn't continue with the launch plans that we had on the  
2 new devices and products. We -- we couldn't afford to buy  
3 stock for Target, Best Buy, stores in the states that we were  
4 partnering with.

5 And we were treading water desperately trying to find a  
6 new technology partner and raise money to keep going. I -- I  
7 sold my remaining investments and shares that I had and put  
8 any funds I had just to pay salaries and keep it going.

9 Q. Did you have to look into bankruptcy as a company?

10 A. Yes, sir, we did.

11 Q. Were there any of your friends that could pitch in to  
12 help the company?

13 A. Yes, sir, there were, yeah. One in particular was one  
14 of our shareholders in the United States, Mike Flint, and I  
15 remember he -- he called me in the office one evening. It  
16 was around midnight, 1:00 a.m.

17 I was working late. I had no reason to go home at that  
18 point. We had some urgent bills to pay that week, or we  
19 would have to shut the business, and he told me to go home,  
20 get some sleep, said he was going to -- he was going to wire  
21 the money in the morning. He said we won't let this fail for  
22 want of --

23 Q. Did he get you some more money?

24 A. He did, sir. He wired the funds in the morning, and we  
25 were able to keep going a bit longer.



1 Q. Ultimately, was it enough to keep the company alive?

2 A. No. No, sir. No.

3 Q. Mr. Racz, did you ever get a chance to build your  
4 Smartflash-enabled integrated player?

5 A. No. No, I didn't, sir.

6 Q. Does that mean you didn't invent it?

7 A. No, sir.

8 Q. Did shutting down the company affect your personal life?

9 A. Yes, sir.

10 Q. How?

11 A. I -- I lost everything. I had nothing left. Pretty --  
12 pretty devastating.

13 Q. What was the lowest point for you, Mr. Racz?

14 A. I -- I would say I hit rock bottom in mid- to late 2003,  
15 April 2004. And I was pretty depressed. If I'm completely  
16 open about it, I was drinking heavily.

17 Q. Did it impact your family and --

18 A. Yes.

19 Q. -- the expense of your family?

20 A. Yes, sir.

21 Q. How?

22 A. We -- we had the school calling us, telling us that if  
23 we didn't pay the tuition fees, we'd have to come collect the  
24 children. And my wife was pretty devastated as well.

25 Q. Mr. Racz, did you personally go bankrupt?

1 A. No, sir. No. No, I didn't.

2 Q. Over time were you able to get your head back above  
3 water?

4 A. Slowly. Never fully recovered, but, yes, slowly, we  
5 were. And my -- a good friend of mine, Marcus Watson, he  
6 loaned me the money to pay all of the school fees, and he  
7 also introduced me to some people who were starting up --  
8 well, they had a spring in Iceland. They wanted to start up  
9 a water company. Because of my experience in water and  
10 manufacturing, I was able to help them build the company.

11 Q. What was the name of that company, sir?

12 A. It was Icelandic Water Holdings, and the brand was  
13 Icelandic Glacial.

14 Q. Was it a successful business?

15 A. It was a huge success, yes. Still is, sir. We linked  
16 up with Anheuser-Busch here in America. We had a  
17 20-million-dollar equity investment to build a new plant in  
18 Iceland, and we were working on distribution through the  
19 United States with them using their network.

20 Q. Mr. Racz, looking at the first patent, the '720, on its  
21 face, it says it issued February 26th, 2008. Did you get  
22 some notification on that day?

23 A. No, I didn't, sir. No. There was a bit of a  
24 miscommunication between Marks & Clerk, who are our UK patent  
25 attorneys, and the firm in the U.S. that was handling the

1 prosecution here.

2 And so I didn't find out about it straight away. I  
3 found out a little time after. Then once Mr. Luckhurst, who  
4 was at Marks & Clerk realized, he gave me a call and told me.

5 Q. How did you feel when you received the call and heard  
6 your patent had finally been granted?

7 A. Ecstatic; over the moon; really, really happy.

8 Q. Did you make a career change once your patent had  
9 issued?

10 A. Yes, I did, sir. I was saving up the money so I would  
11 be able to do it, and fortunately, my wife had some  
12 consulting work she was doing. She was able to support for  
13 me to be able to transition away from what I was working on  
14 and focus on my invention once again.

15 Q. How were you able to keep your patent applications alive  
16 from when the company shut down to when the patent issued?

17 A. Well, I think, fortunately, I built up a good  
18 relationship with partners at Marks & Clerk, and they were  
19 really supportive. I think they also really believed in the  
20 applications.

21 But they would, from time to time, not invoice me on  
22 time, and other times they would, you know, delay chase --  
23 delay chasing up on them. Gave me some -- some fresh air and  
24 space to breathe. And we -- you know, they -- they helped.

25 And we had to drop a lot of applications, though. I

1     couldn't keep my European and Canadian applications.    I  
2     couldn't afford to do that.

3     Q.    How did you decide which patent applications to keep  
4     alive?

5     A.    I determined that the -- the jury system and the patent  
6     system here in the United States is extremely fair.  I  
7     decided that if I was going to keep one alive, it would be  
8     the American one.

9     Q.    After your patent issued, or even before, did you ever  
10    have to take a look at maybe selling an interest or selling  
11    off some sort of interest in your patent?

12    A.    Yes.  Yes, I did, sir.  Yes.

13    Q.    Why is that?

14    A.    Because I had no -- no money for start, and I needed  
15    to -- I wanted to try and develop the portfolio.  I knew that  
16    I could get new claims issued on the handheld multimedia  
17    claims.  I didn't have the funds to continue with the work on  
18    it, so I needed to get a partner in for that.

19    Q.    Did you ever come close to reaching a deal with  
20    somebody?

21    A.    I did, sir, yes.

22    Q.    And what was that deal?

23    A.    November 2009 with a company called Saronite.

24    Q.    And what -- roughly, what would the terms of the deal  
25    have been?

1 A. It was -- they would -- they were going to give me  
2 \$350,000 as an upfront payment and in return for buying the  
3 patents, and I would be left with a 20 percent interest in  
4 any licensing revenues that they received thereafter.

5 Q. Was the 20 percent interest important to you?

6 A. Essentially, yes, or -- I wouldn't have considered a  
7 deal without it.

8 Q. Why?

9 A. Because I wanted to maintain an interest involvement and  
10 not a financial interest moving toward.

11 Q. Did that deal ever get fully consummated?

12 A. Well, almost, but they tried to renegotiate it at a  
13 final change. We both agreed to walk away.

14 Q. Separate from that kind of deal, were you willing to  
15 still do licenses to folks that wanted to use your  
16 technology?

17 A. Absolutely, sir. I've always been willing to license  
18 the technology to a company that had the means to  
19 commercialize it and sell it, market it.

20 Q. Did you want to be fairly compensated if somebody  
21 licensed?

22 A. Yes, sir.

23 Q. Do you feel that way now?

24 A. Yes, sir.

25 Q. Mr. Racz, what do you think would be fair compensation

1 given the investment that you made?

2 A. I believe fair compensation would be in the form of a  
3 royalty, the same as I envisioned back in 2001.

4 Q. And why is that?

5 A. Because that's the fair and correct way of doing it, and  
6 I'm entitled to a royalty for the use of my technology.

7 Q. Where did you learn about royalties, Mr. Racz?

8 A. Self-taught, I guess. I learned about it myself just  
9 from studying and learning about it. But, you know, I also  
10 just have a belief -- a firm belief in it. An ROI, or return  
11 on investment, in a situation like this should be in the form  
12 of royalty.

13 Same as from working in the music industry. If you're  
14 an artist, a songwriter, a publisher, every time a record is  
15 sold, you take a royalty for the sale of that record.

16 Q. And -- and in your mind, what would be the fair way if  
17 Apple wanted to license?

18 A. For them to take a license to the technology in return  
19 for a royalty payment.

20 Q. Do you still believe in the 4-dollar-per-device rate you  
21 mentioned earlier?

22 A. Absolutely. I do, sir.

23 Q. If Apple offered you a few hundred thousand or up to  
24 4-and-a-half million, as we heard about in opening, in your  
25 mind, would that reflect fair value?

1 A. No, sir. No.

2 Q. Mr. Racz, were you ever introduced to somebody that you  
3 felt like you wanted to partner with?

4 A. Yes, I was, sir. Yes.

5 Q. Who was that?

6 A. Mr. Monty Koppel.

7 Q. When did you meet with Mr. Koppel?

8 A. Late January of 2010. I was introduced to him by a very  
9 good friend of mine.

10 Q. And who is Mr. Koppel?

11 A. Mr. Koppel is a -- he's an 86-year-old gentleman. He's  
12 been extremely successful in business. And he's -- every now  
13 and then, he takes up a cause he believes in. And if he can  
14 help people along the way, he does. He's a real gem, and  
15 he's become a good friend.

16 Q. Did he introduce you to a company that would be able to  
17 help?

18 A. Yes. He's like my angel investor. He didn't personally  
19 invest. He introduced me to the people that run his family  
20 investment firm, Latitude, and they -- he recommended that  
21 they take a look at the invention. They did, and they  
22 invested accordingly.

23 Q. Mr. Racz, before there was ever a lawsuit, did Latitude  
24 put in money into the patents?

25 A. Yes, they did, sir, yes, millions of dollars.

1 Q. Tell us about that.

2 A. Well, first of all, they -- before we'd even signed a  
3 deal, they advanced me some funds to enable me to pay off  
4 some urgent bills, some overdue bills, pay off some bills to  
5 Marks & Clerk and also some school fees that had built up,  
6 and then they -- they invested additional money in developing  
7 the patent portfolio to where it is now.

8 Q. Did you set up a company to continue the patent  
9 application work?

10 A. We did so, yes. We set up a new company, which was  
11 Smartflash Technologies Limited.

12 Q. Mr. Racz, after the '720 patent issued in 2008, did you  
13 still think you might get more patents issued from the Patent  
14 and Trademark Office?

15 A. Yes, I did, sir.

16 Q. On what?

17 A. On the handheld multimedia claims in particular.

18 Q. Were you correct?

19 A. I was, sir, yes.

20 Q. Can you show the patents to the jury, sir?

21 A. This is the -- that's the '221 patent that issued in  
22 February 2012 and the '772 patent that issued on Christmas  
23 Day 2012.

24 Q. When they issued, did you believe Apple was infringing?

25 A. Yes, I did, sir.



1 Q. After they issued, did you set up an additional company?

2 A. Yes, we did, sir.

3 Q. What company was that?

4 A. Smartflash LLC.

5 Q. Why did you set up Smartflash LLC?

6 A. Well, we -- we wanted to have a presence here in the  
7 United States. If you want to enforce your patent rights in  
8 the United States, you have to go to court here in the U.S.,  
9 and we set up that company accordingly.

10 Q. Mr. Racz, do you have any formal legal training?

11 A. None, sir.

12 Q. Did you study how to enforce your patent rights?

13 A. Yes, I did, sir.

14 Q. What did you learn?

15 A. I learned that the Judges here in the Eastern District  
16 of Texas and the Courts are very experienced with patent  
17 cases; and I also learned, and based on my own experience,  
18 that the juries here are very fair.

19 Q. Does Smartflash LLC currently make a product, Mr. Racz?

20 A. No, sir, we don't.

21 Q. Why not?

22 A. Well, it wouldn't be possible for us to enter the  
23 market, sir; that infringement is such a roadblock, we  
24 wouldn't able to do that.

25 Q. In case there's any doubt, do you receive money if the

1 jury reaches a verdict in your favor?

2 A. Yes. My family still owns approximately 40 percent of  
3 the shares in the company, and my family will benefit from  
4 it, and I would accordingly, yes.

5 Q. What about the other people that helped you along the  
6 way, Mr. Racz?

7 A. I've arranged to pay all of them back and some.

8 Q. Do you think \$4-and-a-half million is reasonable damages  
9 for infringement of your patents, Mr. Racz?

10 A. No, sir, I don't think that's at all reasonable. In  
11 fact, I think it's insulting.

12 Q. Why?

13 A. Because, like I said, a reasonable royalty is a fair way  
14 of paying it. \$4-and-a-half million wouldn't even be enough  
15 to get Internet Plc back on its feet. It's probably not even  
16 as much as Latitude Investments have invested in developing  
17 the patent portfolio. It's -- it's a very small number next  
18 to everything that's gone into this project.

19 Q. Mr. Racz, how does it make you feel when you hear there  
20 are hundreds of millions of iPhones, iPads, and iPod Touch  
21 devices you believe are using your invention?

22 A. On one hand, it makes me immensely proud to see how  
23 successful my invention has been in the market. And on the  
24 other hand, I feel that it's right and fair and in accordance  
25 with the law that I should receive a reasonable royalty.

1 Certainly correct.

2 MR. CALDWELL: We'll pass the witness, Your Honor.

3 THE COURT: Cross-examination by the Defendant.

4 MR. BATCHELDER: If I could have a moment to set  
5 up, Your Honor?

6 THE COURT: Take a moment.

7 MR. BATCHELDER: Your Honor, could my associate  
8 have leave to pass out the binders?

9 THE COURT: Yes.

10 MR. BATCHELDER: And may I set up a board?

11 THE COURT: Yes.

12 And, Counsel, you're welcome to use that easel with  
13 that board; but given our tight quarters in here, when you  
14 pass the witness, take it down, please.

15 MR. BATCHELDER: I will, sir. Thank you.

16 THE COURT: All right. You may proceed when you're  
17 ready.

18 CROSS-EXAMINATION

19 BY MR. BATCHELDER:

20 Q. Mr. Racz, good afternoon.

21 A. Good afternoon.

22 Q. In your direct examination, you testified about a  
23 company called Internet Plc, correct?

24 A. Yes, sir.

25 Q. Okay. And that's a company you started, right?

1 A. Yes, sir.

2 Q. You were the chairman and principal founder?

3 A. I was the chairman of Chalfont Holdings Limited which  
4 was the parent company, and at times, I believe I was a  
5 director, a chairman of Internet Plc.

6 Q. And I believe you said in your direct examination that  
7 you founded Internet Plc to develop, manufacture, and  
8 commercialize the invention?

9 A. That's correct.

10 Q. Did I get that right?

11 Yes?

12 A. Yes.

13 Q. All right. And when you started Internet Plc, I think  
14 you mentioned you had done some work in the field of water  
15 faucets, correct?

16 A. Water filtration and faucets, yes, sir.

17 Q. And just to be clear, the iPhone device, the iPad, the  
18 accused Apple products, you're not saying that your work in  
19 the water faucet field had anything to do with Apple's  
20 technology, are you, sir?

21 A. No, sir.

22 Q. Okay. And also you said, I think, you explored some --  
23 some -- something in the horticulture field? Did I  
24 understand that correct?

25 A. I worked in commercial horticulture, sir, yes.

1 Q. Okay. And that has to do with the growing of plants?

2 A. Propagation and growing of plants, yes. Yes, sir.

3 Q. And that work doesn't have anything to do with Apple's  
4 technology, correct?

5 A. Nothing whatsoever, sir.

6 Q. Okay. All right. And when you started Internet Plc,  
7 you were not an engineer in electronics or electronic  
8 engineering, correct?

9 A. No, sir.

10 Q. And you were not an engineer in field of computer  
11 science?

12 A. No, sir.

13 Q. And you had no engineering degree at all, right?

14 A. No, sir.

15 Q. At that time, could you write computer code?

16 A. No, sir.

17 Q. Can you now?

18 A. No, sir.

19 Q. Could you have programmed a smart card to do anything?

20 A. No.

21 Q. You were not a person of even ordinary skill in the  
22 field of the claimed invention for your patents?

23 A. Not as has been explained to me, no, sir.

24 Q. You started Internet Plc knowing that you had not  
25 invented mobile devices, correct?

- 1 A. Yes, sir.
- 2 Q. And -- and this is a mobile phone, right?
- 3 A. Yes, sir.
- 4 Q. It's also a smartphone?
- 5 A. Yes, sir.
- 6 Q. And you and Mr. Hulst did not invent mobile phones,  
7 right?
- 8 A. No, we didn't, sir.
- 9 Q. You didn't invent smartphones, correct?
- 10 A. No, sir.
- 11 Q. Just to be clear, when I said, you didn't invent,  
12 correct, and you said, no, sir, were you agreeing with me?
- 13 A. I'm agreeing you that I didn't invent them, sir.
- 14 Q. Thank you.
- 15 Before smartphones, there were MP3 players, correct?
- 16 A. Correct, sir.
- 17 Q. All right. And those were mobile devices used to store  
18 and play music?
- 19 A. Correct, sir.
- 20 Q. You and Mr. Hulst did not invent MP3 players, correct?
- 21 A. Correct, sir.
- 22 Q. All right. And I think, as you mentioned, in the prior  
23 art time period, you actually purchased one, right?
- 24 A. Yes, sir.
- 25 Q. And that was from someone else?

1 A. Correct, sir.

2 Q. And someone else invented that.

3 A. Yes, sir.

4 Q. The accused iPhones, iPads, iPod Touches, they all have  
5 a touchscreen interface; is that correct?

6 A. Yes, sir.

7 Q. And a screen for displaying visual content, correct?

8 A. I believe so, yes, sir.

9 Q. All right. And you and Mr. Hulst did not invent the  
10 touchscreen interface, correct?

11 A. Correct, sir.

12 Q. And you have not invented any sort of screen technology,  
13 correct?

14 A. Correct, sir.

15 Q. All right. So I've put up a board of the Court's claim  
16 constructions. And I can just represent, if Your Honor will  
17 allow, that the parties have agreed on this board reflecting  
18 the Court's claim constructions.

19 And if I could call your attention, sir, to the bottom  
20 one, it's -- it's data carrier. You know that term, right?

21 A. I do, sir.

22 Would it be okay if I move the screen, because I can't  
23 see the board here.

24 Q. Oh, I'm sorry.

25 A. Or I can lean back and then answer questions by moving

1 forward.

2 Q. That will be fine. Are you able to --

3 A. I can do that, sir, yes.

4 Q. Would you, please? Thank you, sir.

5 Can you see it now?

6 A. I can, sir, yes.

7 Q. Okay. So data carrier is in that bottom row of the  
8 Court's claim constructions, correct?

9 A. Correct, sir.

10 Q. And in this case, you understand that Smartflash accuses  
11 these Apple devices, like the iPhone here, of containing  
12 something called a data carrier, correct?

13 A. Yes, sir.

14 Q. You and Mr. Hulst did not invent data carriers, did you,  
15 sir?

16 A. We didn't, sir, no.

17 Q. In fact, that Rio that you bought in the prior art time  
18 period, that MP3 player, it had a data carrier, right?

19 A. Yes, it did, yes.

20 Q. And memory is what the Court has said a data carrier is,  
21 medium capable of storing information, correct?

22 A. That's correct, sir.

23 Q. Okay. And you and Mr. Hulst did not invent memory in  
24 electronics devices, did you?

25 A. No, sir.



1 Q. You didn't invent Flash memory, right?

2 A. No, sir.

3 Q. You didn't invent adding more memory to a previously  
4 existing electronic device or form factor, correct?

5 A. No, we didn't, sir.

6 Q. You did not invent adding Flash memory to a previously  
7 existing electronic device or form factor, correct?

8 A. No, we didn't, sir.

9 Q. You had mentioned I believe --

10 MR. BATCHELDER: Can we put up the slides that were  
11 used for Mr. Racz's presentation? I just want to see Slide  
12 4. Is that possible to get that on the screen? Let's look  
13 at 5. I've got the wrong number.

14 Your Honor, can I grab my binder? I'm sorry. I  
15 got the wrong number.

16 THE COURT: You may.

17 MR. BATCHELDER: Thank you, sir. My apologies.

18 Let's have Slide 3, I'm sorry. This is out of  
19 sync.

20 Well, I tell you what, let's just turn -- can we  
21 put up the '720 patent? That's PX 001. And can we turn to  
22 Figure 1, which I believe is on Page 4?

23 Q. (By Mr. Batchelder) That's your Figure 1 A, correct,  
24 sir?

25 A. That's correct, sir, yes.

1                   MR. BATCHELDER: Can we actually have the whole  
2 figure? Thank you.

3 Q. (By Mr. Batchelder) And so in your Figure 1 A at the  
4 top there, that's an MP3 player example, correct?

5 A. That could be an MP3 player, yes, sir.

6 Q. Okay. And B in the middle there, that shows the bottom  
7 of the device?

8 A. That's correct, sir.

9 Q. And it has a slot for a smart card; is that right?

10 A. That's correct, sir.

11 Q. Okay. And then your Figure 2 --

12                   MR. BATCHELDER: If we could turn to that, please,  
13 on the next page.

14 Q. (By Mr. Batchelder) I believe you showed the jury  
15 earlier, that's the smart card, right --

16 A. Yes, sir.

17 Q. -- in your embodiment, correct?

18 A. Correct, sir.

19 Q. All right. And just to be clear, you and Mr. Hulst did  
20 not invent smart cards, did you?

21 A. No, we didn't, sir.

22 Q. All right. You didn't invent using smart cards for  
23 security and authentication, did you?

24 A. No, sir.

25 Q. You did not invent smart cards that offer a high level

1 of security, ensuring that no one can hack the value off a  
2 card or otherwise put unauthorized -- unauthorized  
3 information on the card?

4 A. No, we didn't, sir.

5 Q. Others before you had done that?

6 A. Absolutely they had, sir.

7 Q. You did not invent smart cards with memory?

8 A. No, sir.

9 Q. You did not invent smart cards with Flash memory,  
10 correct?

11 A. No, sir.

12 Q. All right. One of the components mentioned in your  
13 patent is an interface for communicating with a data  
14 supplier, correct?

15 A. Correct, sir.

16 Q. And WiFi connection over the Internet is such an  
17 interface, correct?

18 A. Yes, sir.

19 Q. All right. You and Mr. Hulst, first of all, you didn't  
20 invent the Internet, correct?

21 A. No, that -- that was Tim Berners-Lee, I believe, sir.

22 Q. And you did not invent receiving or press for content,  
23 correct?

24 A. No, we didn't, sir.

25 Q. You did not invent transmitting digital content,

1 correct?

2 A. No, sir.

3 Q. You did not?

4 A. I'm saying we didn't.

5 Q. Thank you.

6 You did not invent downloading content over the

7 Internet, correct?

8 A. No, we didn't, sir.

9 Q. You did not invent downloading secure content over the  
10 Internet, correct?

11 A. No, we didn't, sir.

12 Q. And all the accused Apple devices have WiFi, correct?

13 A. I believe so, yes.

14 Q. But you and Mr. Hulst did not invent WiFi, correct?

15 A. No, sir, we didn't.

16 Q. All right. Turning back to the claim construction chart  
17 here, you see the top row is payment data. You see that?

18 A. Yes, I see that, sir.

19 Q. Are -- and you and Mr. Hulst did not invent payment data  
20 either, did you?

21 A. No, we didn't, sir.

22 Q. You didn't invent using payment data in connection with  
23 the online sale of content, did you, sir?

24 A. No, sir.

25 Q. You did not invent payment authorization in connection

1 with the online sale of content, did you?

2 A. No, sir.

3 Q. You did not invent receiving requests for payment data  
4 for downloading content, did you?

5 A. No, sir.

6 Q. You didn't invent paying royalties for Internet download  
7 of content, correct?

8 A. No, sir. We didn't, correct.

9 Q. You did not invent online sale of content, correct?

10 A. We didn't, sir.

11 Q. Or online payment for content, correct?

12 A. We didn't, sir.

13 Q. You didn't come up with a first way to source and buy  
14 digital content over the Internet, right?

15 A. We didn't, sir.

16 Q. Payment validation data is the last remaining row on  
17 that claim construction chart. An example of payment  
18 validation data is a receipt which confirms the payment has  
19 been made, correct?

20 A. That's correct, sir.

21 Q. All right. And there is payment validation --  
22 validation data in the prior art, correct?

23 A. I believe probably, yes, sir.

24 Q. And you and Mr. Hulst did not invent that, right?

25 A. No, sir.

1 MR. BATCHELDER: Let's try again with Mr. Racz's  
2 demonstrative deck to pull up Slide 20. We're showing Slide  
3 18. Oh, okay. You don't have it. Okay. Yeah, would it be  
4 possible to bring that up? Is that being pulled up? There  
5 it is. Thank you so much.

6 Q. (By Mr. Batchelder) So at the top there you have --  
7 this is one of your slides, correct, sir?

8 A. Yes, sir.

9 Q. And you have movie rental at the top, correct?

10 A. Yes, sir.

11 Q. All right. And you and Mr. Hulst, you did not invent  
12 the online rental of content like movies, did you?

13 A. I don't believe so, no, sir.

14 Q. Okay. You didn't invent charging different prices for  
15 online rental versus online purchase, did you?

16 A. No, sir.

17 Q. And you didn't invent an online system ending access to  
18 rented content when the rental time period ends, did you?

19 A. I don't believe we did. I'm not a hundred percent. I  
20 don't think so, sir.

21 Q. I'm sorry, I couldn't hear you.

22 A. I don't remember seeing -- I don't remember saying --  
23 no, we didn't, sir. Correct, sir.

24 Q. Okay. Correct you did not invent that?

25 A. Correct.

1 MR. BATCHELDER: If we could come back to the '720  
2 patent to Column 1, Lines 15 through 19, and this is  
3 Plaintiffs' Exhibit 1, Line 15 through 19, please? Thank  
4 you.

5 Q. (By Mr. Batchelder) So it says there: One problem  
6 associated with the increasingly wide use of the Internet is  
7 the growing prevalence of so-called data pirates. Such  
8 pirates obtain data either by unauthorized or legitimate  
9 means and then make this data available essentially worldwide  
10 over the Internet without authorization.

11 Have I read that correctly, sir?

12 A. Yes, sir, you have.

13 Q. You and Mr. Hulst were not the first to recognize this  
14 problem of data piracy on the Internet, were you?

15 A. No, sir.

16 Q. And you and Mr. Hulst did not invent secure online  
17 payment for content, did you?

18 A. No, sir. No, we didn't.

19 Q. You were the not the first to invent -- excuse me, you  
20 did not invent securely paying for and downloading content  
21 wirelessly, did you, sir?

22 A. No, sir.

23 Q. You did not invent securely paying for and downloading  
24 content wirelessly even to a mobile phone, did you?

25 A. I don't believe we did, sir, no.

1 Q. Now, some companies address piracy through something  
2 called Digital Rights Management, or DRM, correct?

3 A. Correct, sir.

4 Q. And that, generally, has to do with protection of rights  
5 for digital content, correct?

6 A. Correct, sir.

7 Q. And you and Mr. Hulst did not invent DRM, did you?

8 A. No, we didn't, sir.

9 Q. You didn't invent DRM in connection with the online sale  
10 of content, did you?

11 A. No, we didn't, sir.

12 Q. You didn't invent DRM that managed royalty payments and  
13 prevented the unauthorized distribution and copying of music  
14 files, correct?

15 A. No, we didn't, sir.

16 Q. You mentioned rules earlier --

17 A. Yes, sir.

18 Q. -- correct? Some of the asserted claims of your  
19 patents -- some of these four claims require access rules,  
20 correct?

21 A. Yes, sir.

22 Q. And some require use rules, correct?

23 A. Yes, sir.

24 Q. Now, access rules are rules restricting access to  
25 content, correct?



1 A. Correct, sir.

2 Q. User rules are rules restricting the use of content?

3 A. Yes, sir.

4 Q. You and Mr. Hulst did not invent use rules, did you?

5 A. No, we didn't, sir.

6 Q. You didn't invent use rules in connection with the  
7 online sale of content, did you?

8 A. No, sir, we didn't.

9 Q. You also didn't invent access rules, did you?

10 A. No, sir.

11 Q. No, you didn't, correct?

12 A. That's correct, sir.

13 Q. And you also did not invent access rules in connection  
14 with the online sale of content, did you?

15 A. Correct, sir.

16 Q. You also did not invent displaying to the user whether  
17 access to a given piece of content is permitted, did you?

18 A. That's correct, sir.

19 Q. Now, at Internet Plc, all of your commercialization  
20 involved smart cards, correct?

21 A. At the time, yes, sir.

22 Q. Internet Plc sold products with a brand name Smartflash,  
23 correct?

24 A. We did, sir, yes.

25 Q. And all commercially available Smartflash products

1 involved smart cards, correct?

2 A. At that time, yes, sir.

3 Q. Well, ever, right?

4 A. Well, yes, we had to close, yes, sir.

5 Q. So --

6 A. Correct.

7 Q. Let me repeat my question and make sure we have a clean  
8 record. All commercially available Smartflash products  
9 involve smart cards, correct?

10 A. Correct, sir.

11 THE COURT: Let's make sure one's finished  
12 answering before the next question is asked and the question  
13 is asked before the answer is given. Okay. Continue.

14 MR. BATCHELDER: Thank you, Your Honor.

15 Q. (By Mr. Batchelder) I was taking notes during your  
16 direct, and I just wanted to to make sure I got this right --  
17 that is, when -- when you decided to commercialize your  
18 invention using smart cards, one of the reasons is because  
19 you thought that was the easiest way?

20 A. Correct, sir.

21 Q. And you thought doing it on devices like a phone would  
22 be harder?

23 A. It would be harder to get the technology deployed in  
24 that way and much easier to start with smart cards, so, yes.

25 Q. And during this time frame in the early 2000s, smart

1 cards were more popular in Europe than in the U.S., correct?

2 A. I would say that's correct, sir, yes.

3 Q. Okay. And that's where you're from, right?

4 A. Well, from -- I'm from Jersey, which is not part of  
5 Europe, but it's considered to be associated to it through  
6 the UK.

7 Q. Okay. It's not part of the European union, but it's  
8 part of the continent of Europe?

9 A. Geographically, yes, Europe, so, yes.

10 Q. Okay. The only cards -- smart cards --

11 MR. BATCHELDER: Strike that, please.

12 Q. (By Mr. Batchelder) The only Smartflash cards sold by  
13 Internet Plc were the Britney Spears card, the Star Trek  
14 card, and the Disney card, correct?

15 A. That's correct, sir.

16 Q. And Internet Plc paid each of those artists and  
17 entities -- that is, Britney Spears, the Star Trek folks, the  
18 Disney company -- significant sums of money for the right to  
19 use their names to market those smart cards, correct?

20 A. Yes, sir. We had to pay royalties, yes.

21 Q. The money that Internet Plc agreed to pay Britney Spears  
22 included a lump sum of 1.5 million, correct?

23 A. I believe that was correct, if certain targets were  
24 achieved.

25 Q. And a 250,000-dollar upfront payment, correct?

1 A. That's correct, sir.

2 Q. And by late October 2001, you were planning to move  
3 ahead with the Britney Spears project, correct?

4 A. We were, sir, yes.

5 Q. It was your view even then that Internet Plc's business  
6 was in promotional marketing, not technology, correct?

7 A. I -- I've seen it described in that way, but I would  
8 typically describe it as a technology company.

9 Q. Sir, you said you've seen it described that way. You  
10 yourself described it that way, didn't you?

11 A. I -- I think I may have done so, yes.

12 Q. Why don't we take a look?

13 MR. BATCHELDER: Can we see Defendant's Exhibit  
14 154?

15 Q. (By Mr. Batchelder) This is a document you created  
16 correct, sir?

17 A. I believe it probably is, yes.

18 Q. Your name --

19 A. My name's on it, yes, sir.

20 Q. And there's a from line at the top, and it's got your  
21 name, correct?

22 A. Yes, sir.

23 Q. And can we look at the very last line on this page, you  
24 say: Our business is in promotional marketing, not  
25 technology.

1 Correct?

2 A. Poor choice of words, yes, sir.

3 Q. They were your words, right?

4 A. They were my words, sir.

5 Q. As to the smart cards that Internet Plc did sell, the  
6 smart card came in something that Internet Plc called a  
7 Smartflash kit, correct?

8 A. Yes, sir.

9 Q. The kit contained a smart card and something called a  
10 reader, right?

11 A. And a CD, as well, sir.

12 Q. And the reader was something you plugged into your  
13 computer, correct?

14 A. Correct, sir. Typically, yes.

15 Q. And the kit costs just -- just about 30 bucks?

16 A. Depending on the product, it would be around the 29.99,  
17 some of them I believe were 34, depending on what came with  
18 it, sir.

19 Q. All right. So right around \$30?

20 A. I'd agree with that, yes.

21 Q. Okay. So let's take a Britney Spears kit as an example.  
22 If you bought a card and a reader, you were buying membership  
23 to a fan club, correct?

24 A. Correct, sir.

25 Q. And access to content?

1 A. Yes, sir.

2 Q. And to use it, you connected the reader to a computer,  
3 right?

4 A. You -- firstly, you would download some software from  
5 the CD that came with it, so the client software.

6 Q. Would you -- would you connect the reader to a computer,  
7 sir?

8 A. Yes, sir.

9 Q. All right. And when you slid the card into the slot in  
10 the reader, then you could access a website, correct?

11 A. Yes. Yes, sir.

12 Q. Okay. And the card was registered to you, the user,  
13 once you bought it, correct?

14 A. Correct, sir.

15 Q. And would have a user ID associated with it, correct?

16 A. Yes, it would, sir.

17 Q. All right. And to be clear, you and Mr. Hulst did not  
18 invent that idea either -- that is, the idea of associating  
19 users with devices, correct?

20 A. Yes, that's correct, sir. Yes.

21 Q. Okay. Internet Plc's Britney Spears cards used that  
22 concept from the prior art, correct, associating a user with  
23 a device?

24 A. Yes.

25 Q. And when you slid the card into the reader, it would

1 check your user ID to make sure you were authenticated,  
2 right?

3 A. Yes. It was direct URL application on the chip -- an  
4 applet on the chip.

5 Q. Okay. Your understanding is that because you had paid  
6 for the Smartflash kit, that user ID was payment data, even  
7 though providing that user ID did not confer payment,  
8 correct?

9 A. No, that's not payment data.

10 MR. BATCHELDER: Can we pull up -- Your Honor, can  
11 I approach the witness with his deposition transcript,  
12 please?

13 THE COURT: Yes. But, counsel, approach the bench  
14 first.

15 (Bench conference.)

16 THE COURT: I'm going to have to let this jury have  
17 one more short recess. How much more cross do you think you  
18 have? Best guess?

19 MR. BATCHELDER: It's fairly substantial. I'd say  
20 another maybe 45 or 50 minutes.

21 THE COURT: I assume you're going to attempt to  
22 impeach him at this point?

23 MR. BATCHELDER: I am. Can I finish this and --

24 THE COURT: We'll do that and then we'll recess.

25 MR. BATCHELDER: Thank you.

1           MR. CALDWELL: Your Honor, while we're up here, I'd  
2 like to point out that after he called me out and brought us  
3 up here on payment data, he's trying to go and talk about the  
4 inventor's definition of payment data. It's the thing that I  
5 wasn't -- I mean, I was pointing to the intrinsic record, and  
6 what he's trying to do is now ask the inventor about payment  
7 data via impeachment. And it's really the issue. I was  
8 actually trying to honor the Court's claim construction  
9 because they had previewed in opening they were going through  
10 this path.

11           MR. BATCHELDER: I'm -- I'm going to direct him to  
12 the Court's claim construction which is exactly what Your  
13 Honor asked us to do.

14           THE COURT: Well, I think I've been real clear on  
15 that. If I'm convinced that somebody is ignoring my  
16 instruction, I won't be happy. All right. Let's proceed.

17           (Bench conference concluded.)

18           THE COURT: All right. Counsel, you may proceed.

19           MR. BATCHELDER: Thank you, Your Honor.

20           THE COURT: You have leave to approach the witness.

21           MR. BATCHELDER: Thank you, sir.

22           THE WITNESS: Do you mind if I get my glasses? I  
23 can't see --

24           THE COURT: Stay where you are. Someone will bring  
25 them to you.



1 MR. CASSADY: May I approach, Your Honor?

2 THE COURT: You may.

3 MR. CASSADY: Thank you.

4 MR. BATCHELDER: Your Honor, may I remind the  
5 witness of the question pending?

6 THE COURT: Proceed.

7 Q. (By Mr. Batchelder) The question was: Your  
8 understanding is that because you had paid for the Smartflash  
9 kit, that user ID was payment data, even though providing  
10 that user ID could not confer payment, correct?

11 A. Yes, I misunderstood the construction -- the Court's  
12 construction at the time, sir.

13 Q. I see.

14 MR. CALDWELL: Your Honor, we -- we object. The  
15 deposition is before there was a Court's claim construction.  
16 It's being used in a misleading way. That's the objection,  
17 Your Honor.

18 THE COURT: Do you still wish to proceed with the  
19 deposition, counsel?

20 MR. BATCHELDER: I do.

21 THE COURT: Understanding that the deposition was  
22 taken before the Court's claim construction was issued?

23 MR. BATCHELDER: I'm asking about the witness's  
24 understanding of the term in this patent, Your Honor, based  
25 on this Court's claim construction, to see if -- if that is

1       what his understanding was.

2               THE COURT:   And you're using his deposition which  
3       was taken before the claim construction order was issued?

4               MR. BATCHELDER:   I'm going to ask him, Your Honor,  
5       if I may, if he understood it to be -- to have this meaning.

6               THE COURT:   I'm going to sustain that objection.

7               MR. BATCHELDER:   All right, sir.   And, Your Honor,  
8       you mentioned that you may want to have a break.   This may be  
9       a good time to do that.

10              THE COURT:   All right.   Ladies and Gentlemen, we're  
11       going to take one more short recess today.   It's going to  
12       have to be short.   But you may leave your notebooks in your  
13       chairs.   Don't discuss anything about the case with each  
14       other.   And we'll have you back in here shortly and continue.  
15       You're excused for recess at this time.

16              COURT SECURITY OFFICER:   All rise for the jury.

17              (Jury out.)

18              THE COURT:   All right.   The Court stands in recess  
19       for the next 10 minutes.

20              (Recess.)

21              COURT SECURITY OFFICER:   All rise.

22              THE COURT:   Be seated, please.

23              Let's bring in the jury, please.

24              COURT SECURITY OFFICER:   All rise for the jury.

25              (Jury in.)

1 THE COURT: Please be seated.

2 All right. Counsel for Defendants may continue  
3 with your cross-examination of the witness.

4 MR. BATCHELDER: Thank you, Your Honor.

5 Can we see Defendant's Exhibit 189, please.

6 Q. (By Mr. Batchelder) Do you recognize this document, Mr.  
7 Racz?

8 A. I do, sir, yes.

9 Q. This was created by an entity called Eco Capital; is  
10 that right?

11 A. That's correct, sir, yes.

12 Q. And Eco Capital was introduced to Internet Plc as a  
13 financial specialist who could help raise funding?

14 A. That's correct, sir.

15 Q. And you regarded Eco Capital as an advisor to Internet  
16 Plc, correct?

17 A. Yes, sir.

18 Q. It also audited your books, correct?

19 A. They did, sir.

20 Q. Eco Capital, your auditor and advisor, concluded that it  
21 was a mistake to have issued these Britney Spears cards  
22 because the market potential for sales of such cards was too  
23 small, correct?

24 A. That's correct. That's what they wrote.

25 MR. BATCHELDER: Can we take a look at Page 15?

1 Q. (By Mr. Batchelder) About two thirds of the way down the  
2 page, right at the bottom of the paragraph beginning with the  
3 decision to issue, they said: The decision to issue  
4 Smartflash cards providing access to a website containing  
5 exclusive information -- info about tours and live concerts  
6 of Britney Spears was a commercial mistake because the market  
7 potential for sales of such cards was too small, correct?

8 A. That was their opinion.

9 Q. And they reported that to you, right?

10 A. They did, sir.

11 Q. In their capacity as your advisor, correct?

12 A. Yes. Okay. I'll agree to that, yes.

13 MR. BATCHELDER: And can we see the next paragraph  
14 as well, please?

15 Q. (By Mr. Batchelder) It says: Eco Capital does not  
16 consider the mistakes of IG at the initial stage of  
17 development would prevent it from being a commercial success  
18 in the future subject to the proper financial management  
19 being in place.

20 Do you see that, sir?

21 A. I see that written there, yes.

22 Q. And IG was the Internet Plc group?

23 A. That's what they named it in this document, yes, sir.

24 Q. Okay. And, again, you were chairman of Internet Plc,  
25 right?

1 A. I was chairman of Internet Pl -- well, chairman of  
2 Chalfont Holdings, which is where they were referring to the  
3 IG group, sir.

4 Q. The mistakes that they're referring to are the mistakes  
5 of you and your colleagues in running Internet Plc?

6 A. That was their opinion, sir.

7 Q. My question, sir, was the mistakes that they're  
8 referring to are the mistakes of you and your colleagues,  
9 correct?

10 A. I don't know, sir. I didn't write it. They did.

11 Q. You got some feedback from customers that this website  
12 experience, in connection with the Britney Spears kit, was  
13 not worth the \$30 you were charging, correct?

14 A. I remember mixed feedback. Some people really liked it,  
15 and others didn't enjoy the experience as much. It was  
16 mixed.

17 MR. BATCHELDER: Let's take a look at Defendant's  
18 Exhibit 175.

19 So can we go to the very top, please?

20 Q. (By Mr. Batchelder) There's a reference to eBritney.  
21 Can you see that, sir?

22 A. I can see that, yes.

23 Q. And that was a Britney Fan Club site, correct?

24 A. I think it was, yes, sir.

25 Q. Okay. And then just a little ways down, there's

1 something that's a reference to a mother's gift.

2 Do you see that?

3 A. Yes, I can see that.

4 Q. And then -- so it begins by saying: By now, you have  
5 heard that Britney has written a novel with her mother,  
6 Lynne, back in 2001. Well, did it stink, or was it great?  
7 And it says: I'm happy to say that after reading that novel  
8 in just hours, it was fantastic.

9 Do you see that?

10 A. I can see that's what it says, sir.

11 Q. Okay. And then a little ways down, it refers to your  
12 Smartflash kit, doesn't it?

13 Do you see that?

14 A. Yes, it does, yes.

15 MR. BATCHELDER: And can we take a look at the  
16 bottom?

17 Q. (By Mr. Batchelder) It says --

18 MR. BATCHELDER: Yeah. In that paragraph beginning  
19 with "if."

20 Q. (By Mr. Batchelder) If you happen to win this program  
21 for free at a Britney show, go ahead and give it a try. If  
22 you decide to be stupid like me and pay 30 bucks to buy it at  
23 one of her shows, you can spend your hard-earned money on  
24 something more exciting.

25 Do you see that?

1 A. I can see that, yes.

2 Q. And a couple of paragraphs up, it ends by saying: Nope,  
3 nothing fancy. It's not a cool computer program, but just a  
4 cheap little website.

5 Do you see that?

6 A. I can see that's what it says, sir.

7 Q. Now, in the case of Internet Plc's Britney Spears  
8 project, and in the case of its Star Trek project, for each  
9 of those projects, there was a net revenue loss of around  
10 half a million dollars, correct?

11 A. That's not the way -- not the way that I looked at it.  
12 We discussed this at my deposition.

13 Q. My question, sir, is: Was there a net revenue loss of  
14 around half a million dollars?

15 A. No. There was an investment of around half a million  
16 dollars, sir.

17 Q. Let's take a look at your deposition, Page 335, Line 20.  
18 And in the case of Britney Spears and in the case of Star  
19 Trek, for each of those projects, you're saying there was a  
20 net revenue loss of roughly half a million dollars, correct?

21 A. That's correct.

22 Q. And I need to keep going.

23 And then answer: I'm saying that's probably -- I didn't  
24 say approximately half a million dollars. I said around.

25 MR. BATCHELDER: And let's go over to the next page

1 through Line 4.

2 Q. (By Mr. Batchelder) It could have been a lot more. I'm  
3 saying the estimate right now, without looking at the figures  
4 and data, I would say at least half a million dollars in each  
5 project.

6 Have I read that correctly, sir?

7 A. You read that correctly from that section, yes, sir.

8 Q. Thank you.

9 THE COURT: Counsel, if you're going to read like  
10 that, please slow down just a little bit.

11 MR. BATCHELDER: Thank you, Your Honor. Appreciate  
12 that.

13 Q. (By Mr. Batchelder) There were indisputably net --  
14 negative net revenues associated with those projects,  
15 correct?

16 A. I -- I believe that we had investments. We didn't term  
17 it as net negative revenue, sir.

18 Q. You suffered losses in connection with the Disney card  
19 project also, correct?

20 A. We -- we put a lot of investment money into it, sir.

21 Q. Did you make money?

22 A. No. The company was shut down, sir.

23 Q. Did you make money with those three projects?

24 A. No, we didn't, sir.

25 Q. Thank you.



1 MR. BATCHELDER: Let's take a look at Defendant's  
2 Exhibit 140.

3 Q. (By Mr. Batchelder) Do you recognize this document?

4 A. I do, sir, yes.

5 Q. This is another document from your auditor and financial  
6 advisor Eco Capital, correct?

7 A. It is, sir, yes.

8 Q. And you were chairman at Internet Plc at the time this  
9 document was created and used, correct?

10 A. I was chairman of Chalfont Holdings, sir.

11 MR. BATCHELDER: Can we pull up in your deposition,  
12 please, Page 344, Lines 6 through 8?

13 Q. (By Mr. Batchelder) Question: But you were chairman of  
14 Internet Plc at the time this document was created and used,  
15 correct?

16 Answer: It would appear so, yes.

17 Have I read that correctly, sir?

18 A. Yes, you have.

19 Q. Coming back to Defendant's Exhibit 140, you had a chance  
20 to review this document and comment on it before it went out,  
21 correct?

22 A. I did.

23 MR. BATCHELDER: Can we take a look at Page 26,  
24 please, at the bottom?

25 Q. (By Mr. Batchelder) It says: On the negative side, the

1 group has spent approximately \$500,000 on the Britney Spears  
2 card project that generated virtually no revenue for IG.

3 Initial estimates of Britney Spears card sales, which  
4 were overly optimistic, were undermined by a lack of  
5 high-quality content originally envisaged would be provided  
6 to the group.

7 Do you see that?

8 A. That was their opinion, yes, sir.

9 Q. And that was the opinion that they gave to you, correct?

10 A. I disagreed with it at the time, yes, sir.

11 Q. All right. So this document was generated as an  
12 investment vehicle for Internet Plc, correct?

13 A. It was a rescue project for Internet Plc, sir.

14 Q. To raise money, correct?

15 A. Yes.

16 Q. So are you saying, sir, that it had a statement in it  
17 that you regarded as false, you had a chance to review it as  
18 chairman, but you let it go out to raise money anyway?

19 A. I disagreed with it, and I disagreed with several things  
20 in there with Alex Shadrin, who wrote it, but it still went  
21 out. That was my personal opinion.

22 Q. Could you have told them not to send it?

23 A. I wasn't in a position to, sir.

24 Q. You were chairman of the company?

25 A. I was chairman of the holding company, but we weren't in

1 a position -- we were desperate for funds, and they were our  
2 last-ditch attempt at survival, sir.

3 Q. So you're okay with a document going out with a  
4 statement you felt was false?

5 A. I wasn't happy with it, sir.

6 MR. BATCHELDER: Can we take a look at Defendant's  
7 Exhibit 139?

8 Q. (By Mr. Batchelder) That's another document written by  
9 Eco3 Capital, correct?

10 A. Correct, sir.

11 Q. And it explains why investors approached by Eco had  
12 decided not to invest in Internet Plc, correct?

13 A. That's what it says, sir.

14 Q. And you don't remember responding to this document, do  
15 you?

16 A. I don't believe I did. I might have done, but I don't  
17 recall responding to it. I think we might have had a  
18 conversation. I can't be a hundred percent sure, sir.

19 Q. All right. The very first numbered paragraph in the  
20 three says: Internet Plc does not generate revenues --

21 THE COURT: Slow down, Counsel.

22 MR. BATCHELDER: I'm sorry, Your Honor.

23 Q. (By Mr. Batchelder) Internet Plc does not generate any  
24 revenues after two years of operations.

25 That's how it begins, correct?

1 A. That's correct. We just started launching product at  
2 the time we had the rug pulled from under our feet, so yes.

3 Q. And the second numbered paragraph --

4 MR. BATCHELDER: If you'd go to that, please.

5 Q. (By Mr. Batchelder) Internet Plc has no contracts with  
6 any party that commits itself to pay Internet Plc for its  
7 products.

8 You see that?

9 A. That was the result of what happened, sir, yes.

10 MR. BATCHELDER: And if we can go to the next page.

11 Q. (By Mr. Batchelder) There's actually your -- something  
12 on the back. It says: Typical. We have already fallen.

13 Do you see that?

14 A. Yes, sir.

15 Q. You wrote that, didn't you?

16 A. I did, sir.

17 Q. You wrote that, because Internet Plc was already  
18 spiraling into failure, correct?

19 A. I wrote that because I was saying it was typical of how  
20 I felt about Alex Shadrin. I felt let down by him, sir.

21 MR. BATCHELDER: All right. Can we go back to the  
22 first page?

23 Q. (By Mr. Batchelder) It describes the Britney Spears  
24 project as not successful, doesn't it, at the end of that  
25 Paragraph 2?

1 A. Yes, it does. That was the opinion they stated, sir.

2 Q. All right. Now, you mentioned in your direct  
3 examination, in connection with Chalfont Holdings, that you  
4 had come up with a licensing model of \$4 per device, correct?

5 A. That's correct, sir, yes.

6 Q. And would you tell the jury, how much money did Chalfont  
7 make using that licensing model?

8 A. We didn't have any money from it. We hadn't had a  
9 patent granted, so we couldn't license it at that stage, sir.

10 Q. Okay. So the answer is \$0?

11 A. Absolutely, yes, sir.

12 Q. Internet Plc shut down in early 2003, correct?

13 A. Yes, sir.

14 Q. And ultimately filed for bankruptcy?

15 A. Yes, sir.

16 Q. Now, many of Internet Plc's investors were your friends  
17 and business associates, correct?

18 A. Yes, sir.

19 Q. People you had encouraged to invest?

20 A. Yes, sir.

21 Q. To the tune of about \$6 million?

22 A. Thereabouts, sir.

23 Q. And you were contacted by liquidators in that timeframe,  
24 correct?

25 A. Yes, sir.

1 Q. And these were folks whose job it was to monetize as  
2 many of Internet Plc's assets as possible to pay as much  
3 money back as possible to those investors, right?

4 A. Yes. Including myself, sir, yes.

5 Q. And you had spoken to a man named Richard Birch whose  
6 job was to help with that project, right?

7 A. I did, sir.

8 Q. And you told him you were going to take care of some  
9 things in connection with the liquidation, right?

10 A. I did, sir, yes.

11 Q. But you didn't do what you agreed to do, right?

12 A. We never finalized what we discussed, sir, no.

13 Q. So the record is clear, so you didn't do what you had  
14 agreed to do, correct?

15 A. Okay. Yes.

16 Q. You received a letter from the liquidators asking you to  
17 follow through on your agreements, but you didn't open it,  
18 right?

19 A. Not for a while after, sir, no.

20 Q. And you left town, right?

21 A. Yes, sir.

22 Q. Not for a week or two, but for a few months, maybe more,  
23 correct?

24 A. I was backwards and forwards, sir.

25 Q. Sir, can I have an answer to my question?

1 THE COURT: Counsel, if you don't think the witness  
2 is responsive, direct it to the Court.

3 MR. BATCHELDER: Thank you, Your Honor.  
4 Your Honor, I object to that answer as nonresponsive.

5 THE COURT: I'll sustain the objection.

6 A. I was suffering from depression, sir. I was going  
7 backwards and forwards to Jersey and to see my mother in  
8 Scotland and to see my family. I was not in a good space,  
9 sir.

10 Q. (By Mr. Batchelder) Sir, as of your deposition last  
11 August, you -- you acknowledge that you'd gone away for a few  
12 months, maybe more, but you couldn't remember where you went,  
13 right?

14 A. Some of the time I didn't actually know where I was at  
15 the time, sir.

16 Q. Sir, I'm asking, as of this past August when I took your  
17 sworn deposition, you said you had left town for months but  
18 couldn't remember where you went, right?

19 A. Yeah. That's what I meant, sir, yes.

20 Q. All right.

21 MR. BATCHELDER: Can we pull up Defendant's Exhibit  
22 160, please?

23 Oh, I'm sorry. Put it down. My mistake.

24 Q. (By Mr. Batchelder) You mentioned in your direct  
25 examination a company called Cadence, also known as Tality?

1 A. Yes, sir.

2 Q. When it was still in business, Internet Plc hired the  
3 services of that company, correct?

4 A. Yes, sir.

5 Q. To do what?

6 A. To be our electronic design engineering partner to  
7 develop the products that we wanted to produce and to work  
8 with us on that side of things.

9 Q. And they did work for you, right?

10 A. Yes, they did, sir.

11 Q. You promised to pay them money, right?

12 A. Yes, sir.

13 Q. And when Internet Plc went out of business, it still  
14 owed Cadence or Tality a large sum of money, maybe 3- or  
15 \$400,000, correct?

16 A. That's correct, sir.

17 Q. All right. And to this day, neither you nor the company  
18 you chaired, Internet Plc, ever paid that debt, correct?

19 A. No, sir.

20 Q. Am I correct?

21 A. That's correct, sir.

22 Q. In connection with the debts from the Internet Plc days,  
23 you, Patrick Racz, defaulted on a loan from the Royal Bank of  
24 Scotland, correct?

25 A. Yes, sir.



1 Q. That default led to a court judgment against you,  
2 correct?

3 A. Yes, sir.

4 Q. Now, Internet Plc closed its doors in 2003?

5 A. Yes, sir.

6 Q. All right. And when this lawsuit was filed against  
7 Apple a decade later in May 2013, that default taken out  
8 against you by the Royal Bank of Scotland, that was still  
9 outstanding, right?

10 A. Sir, I've actually paid back about 300,000 pounds to the  
11 Royal Bank of Scotland, and there's a small amount remaining,  
12 sir, by comparison to it.

13 MR. BATCHELDER: Your Honor, again, I object to the  
14 nonresponsiveness of the answer.

15 THE COURT: Well, you asked if it was still  
16 outstanding, so he -- he indicated what he had paid. I'll  
17 overrule the objection.

18 MR. BATCHELDER: Thank you, sir.

19 Q. (By Mr. Batchelder) When the lawsuit was filed against  
20 Apple, you hadn't paid any of it off, correct?

21 A. When you say I hadn't paid any of the money I owed to  
22 Royal Bank?

23 Q. Yes.

24 A. I paid them back a small fortune over the years, sir.

25 Q. I see. Okay. Thank you.

1 A. I made an arrangement -- they made an arrangement with  
2 me. They offered for me to settle the debt for one-third of  
3 what I owed them, and I made the decision I wanted to repay  
4 them in full, sir, and I made arrangements for that to  
5 happen, sir.

6 Q. Thank you.

7 A. You're welcome.

8 Q. You have purchased many of the accused Apple products,  
9 correct?

10 A. I'm sorry. I didn't hear, sir.

11 Q. You have purchased many of the accused Apple products,  
12 correct?

13 A. I have, sir.

14 Q. You've purchased a couple of iPod Touches, right?

15 A. Yes.

16 Q. And an iPad, right?

17 A. Yes, sir.

18 Q. And your family members have also purchased iPhones,  
19 correct?

20 A. Yes, sir.

21 Q. At some point around 2000, you were introduced to  
22 someone at Intertrust named Oliver Mills, correct?

23 A. I believe I met Oliver Mills in 1999 -- I'm sorry. You  
24 were saying the first time I met or -- please could you  
25 repeat the question? I'm sorry.

1 Q. At some point around the year 2000, you were introduced  
2 to someone at Intertrust named Oliver Mills.

3 A. I think I met him around that timeframe, around '99,  
4 2000. Oliver Mills and Dean West, yes, sir.

5 Q. And you were introduced by someone named Shane Dodson?

6 A. I believe so, yes, sir.

7 Q. And roughly eight years later, in October 2008, you  
8 reached back out to Intertrust's Oliver Mills, correct?

9 A. That's correct.

10 MR. BATCHELDER: Let's look at Defendant's Exhibit  
11 198, please.

12 Q. (By Mr. Batchelder) So there at the top, this is an  
13 email from you to Mr. Mills, correct?

14 A. That's correct, sir.

15 Q. And the subject line is something of significant benefit  
16 to Intertrust, correct?

17 A. That's correct, sir.

18 Q. And essentially, what you were asking is that Intertrust  
19 would consider entering into some kind of joint venture with  
20 you or perhaps investing with you, correct?

21 A. That's correct, sir.

22 Q. Intertrust was looking at the '720 patent, correct?

23 A. That's correct, sir.

24 Q. And the continuation application?

25 A. I believe they were also looking at that also, yes, sir.

1 Q. Now, in the -- in the top third of that email, third  
2 paragraph, you say: In addition to the above, I have  
3 retained all relevant documentation and records going back to  
4 the date of invention in 1998, correct?

5 A. Yes, sir.

6 Q. Was your invention in 1998?

7 A. No. I think I said at the depo, when you asked me the  
8 same question, it was a typo, sir, and I've never ever said  
9 '98 before. It was just a mistake.

10 Q. You would prefer it if your invention had been in 1998,  
11 correct?

12 A. Yes, sir. And I said that at my depo as well, sir.

13 Q. This references -- a couple of paragraphs later, it  
14 says: The files also include extensive background records  
15 relating to SanDisk and other later entrants, correct?

16 A. That's correct, sir.

17 Q. And it doesn't mention Apple, right?

18 A. No, sir, it doesn't.

19 Q. Now, as soon as the iPhone hit the market, you knew what  
20 it did, right?

21 A. Absolutely, sir.

22 MR. BATCHELDER: Let's take a look now at  
23 Defendant's Exhibit 225, please.

24 Q. (By Mr. Batchelder) This is a November 20th, 2008 email  
25 from Oliver Mills back to you, correct?

1 A. That's correct, sir.

2 Q. And it CC's that Mr. Shane Dodson, who had introduced  
3 you, correct?

4 A. That's correct, sir.

5 Q. And he says at the top there: Sorry that this has taken  
6 longer than anticipated, but our guys were pretty thorough in  
7 their investigations.

8 Do you see that?

9 A. I do, sir, yes.

10 Q. And then he goes on to say: Their feeling was that the  
11 claims were broad, but that there was generally little that  
12 gave highly significant or distinctive advances over any  
13 prior art.

14 Do you see that, sir?

15 A. That was the opinion he stated then, yes, sir.

16 Q. And you didn't get back to him, did you?

17 A. I don't -- I don't remember getting back to him. I  
18 don't recall speaking to him. Maybe Shane spoke to him. I  
19 don't remember, sir.

20 Q. You didn't say --

21 THE COURT: Excuse me just a minute. I'm going to  
22 instruct the witness not to refer to individuals by first  
23 name only. This is not the first time you've done it.

24 THE WITNESS: I apologize, Your Honor.

25 THE COURT: I've instructed counsel to advise their

1 witnesses not to refer to individuals by first name only, so  
2 I'm assuming you've not been instructed, but I'm instructing  
3 you now.

4 THE WITNESS: I've been instructed. I'm sorry,  
5 sir. I apologize.

6 THE COURT: All right. Let's continue.

7 Q. (By Mr. Batchelder) So when you got this email from Mr.  
8 Mills saying there was generally little that gave highly  
9 significant or distinctive advances over any prior art, you  
10 didn't call him or write him and say: Oliver Mills, what are  
11 you talking about? I thought I had a great invention here.

12 A. No. I don't remember doing so, sir, no.

13 Q. You didn't ask him what prior art he was referring to?

14 A. No, sir. No, I didn't.

15 Q. You haven't communicated with him since?

16 A. I don't believe I have, sir. I don't recall doing so.

17 Q. So Mr. Mills goes on to say, referring to his team:  
18 They felt that if there is an important product upcoming that  
19 looks like it might really succeed in the market, it might be  
20 worthwhile re-looking at these patents more carefully in  
21 relation to that specific product, but as one example, they  
22 considered SanDisk, who are currently trying their best to  
23 push a similar concept with little success.

24 Do you see that, sir?

25 A. I do see that, yes.

1 Q. So he refers to, if there are -- significant product, it  
2 might be worth revisiting, right, an important product?

3 A. That's what he says, sir.

4 Q. And you knew at the time that the iPhone was a  
5 significant product, right?

6 A. I believe so, yes, sir.

7 Q. Okay. And he wasn't saying he thought the iPhone  
8 practiced this patent, did he?

9 A. He clearly hasn't looked at that, sir.

10 Q. And you didn't respond by saying: I think the iPhone  
11 practices this patent, Oliver Mills.

12 A. No. I didn't respond at all, sir.

13 Q. Now, less than a year later, SanDisk came up again in  
14 your conversation with third parties, correct?

15 A. Yes, it did, sir.

16 Q. In 2009, you entered into a discussion with a company  
17 called Turtle Bay, correct?

18 A. Yes, I did, sir.

19 Q. You invited Turtle Bay to pay money for an equity share  
20 of your patents, correct?

21 A. I did, sir.

22 Q. And the man you were negotiating with at Turtle Bay was  
23 named Jeff Ronaldi, right?

24 A. That's correct, sir.

25 Q. You came close to reaching the agreement?

1 A. We had a number of discussions. We never drafted a  
2 contract or anything, I don't believe, sir, or a terms sheet.

3 MR. BATCHELDER: Let's take a look at Defendant's  
4 Exhibit 200.

5 Q. (By Mr. Batchelder) So your purpose in writing an  
6 email -- I'm sorry. Let's just frame it.

7 At the top, it's from you, correct?

8 A. That's correct, sir.

9 Q. And it's to Mr. Ronaldi, correct?

10 A. Correct, sir.

11 Q. And your purpose in writing this email was to convince  
12 Mr. Ronaldi to invest in your patents, right?

13 A. Yes. I was interested in getting him to do that, sir,  
14 yes.

15 Q. And you say -- in about the middle, you say: Our  
16 claimed priority date of October 1999 predates any related  
17 concepts in the field of secure memory cards, and I believe  
18 that there is a very strong potential for gaining significant  
19 fees for a number of infringing companies in the U.S. market,  
20 the largest of which is SanDisk.

21 You see that?

22 A. I do, sir, yes.

23 Q. Now, in your negotiations with Mr. Ronaldi, you were not  
24 suggesting that you would confine the deal to any industry  
25 sector like secure memory cards, were you?



1 A. No, I wasn't, sir.

2 Q. He would have been involved with anything you did with  
3 the patents, right?

4 A. Yes, he would, sir.

5 Q. And this was two years after the iPhone hit the market,  
6 right?

7 A. That's correct, sir.

8 MR. CALDWELL: Objection, Your Honor.

9 May we approach?

10 THE COURT: Approach the bench.

11 (Bench conference.)

12 THE COURT: What's your objection, counsel?

13 MR. CALDWELL: Your Honor, I'm happy to make  
14 objections from the table. I just don't know what you find  
15 appropriate, but he's violating a motion in limine --

16 THE COURT: I'd rather you not go back and forth,  
17 but I'll let you do it this time.

18 MR. CALDWELL: Thank you. I feel like he's  
19 violating a motion in limine. The hotly contested issue in  
20 claim construction is whether the patents are limited to a  
21 card -- like a removable card. We won that. We won it  
22 through additional briefing later. We won it through our  
23 motion in limine where they're not allowed to talk about it.

24 And the whole point of him doing this is saying all  
25 you did was talk to people about your patents applying to a

1 card and you never told them it applied to something else  
2 like the iPhone. That's his whole -- whole purpose.

3 And we have an order from the Court saying it  
4 absolutely is not limited to a card when properly construed.  
5 That was absolutely flatly rejected, and there's a motion in  
6 limine on it.

7 MR. BATCHELDER: Your Honor, the point of my  
8 cross-examination, as it's already revealed, is to show that  
9 he was communicating to this other party, pointing to  
10 infringers after the iPhone hit the market and he wasn't  
11 saying the iPhone infringed.

12 MR. CALDWELL: He is testifying by saying his  
13 memory --

14 THE COURT: Give me -- give me your limine that you  
15 say it infringes. Bring it to me.

16 How much more do you think you have, Mr.  
17 Batchelder?

18 MR. BATCHELDER: I would say probably half an hour,  
19 maybe less.

20 THE COURT: Wouldn't care to make it 10 minutes,  
21 would you? That's a joke.

22 MR. BATCHELDER: Okay.

23 MR. CALDWELL: Your Honor, this is -- it's retyped  
24 there for easy access. The limine covers any arguments  
25 inconsistent with the Court's claim construction, including

1 any opinions or claims limited to smart flash card, smart  
2 card, or any sort of integrated circuit card, for example,  
3 based on preferred embodiment, company names, any past --

4 THE COURT: Just don't touch that.

5 MR. CALDWELL: Yes, sir. Any past company names,  
6 any commercial embodiments. Anything. It's been the  
7 centerpiece of this case, Apple constantly arguing you have  
8 to have a card. The patents plainly say it can be  
9 integrated, and that construction was -- was rejected.  
10 That's my data carrier is -- is a medium for carrying data,  
11 as it says on the -- on the board up there.

12 MR. BATCHELDER: Your Honor, again, the point of my  
13 cross is that he was communicating with this third party in  
14 2009.

15 THE COURT: I'm not concerned about your point.  
16 I'm concerned about whether you violated the MIL. It doesn't  
17 say if your mental state is such and such, you can ask this.  
18 It just says you don't go there.

19 MR. BATCHELDER: Well, what I'm saying is where I'm  
20 going is about the iPhone. It's not about whether the  
21 invention is limited to cards. My point is you were talking  
22 to him about another company and not about Apple. That's  
23 been the whole point in this cross.

24 THE COURT: I tell you what I'm going to do. I'm  
25 going to carry the objection, and I'm going to see where you

1 go. And if I'm convinced that you're pursuing a path that  
2 violates this MIL, then I'll impose some kind of penalty.

3 MR. BATCHELDER: Understood.

4 MR. CALDWELL: And, Your Honor, just for additional  
5 clarity while you're thinking about it, I understand your  
6 ruling certainly. At the last pre-trial with Judge Mitchell,  
7 Apple argued that they should be able to say this, something  
8 about his embodiments being a card and things like that, if  
9 we were going to pursue an allegation of copying, and  
10 she ordered us to let them know, and we gave it up -- and we  
11 gave it up and told them we're not going to allege copying --

12 MR. BATCHELDER: And I'm not arguing his embodiment  
13 is a card. I'm just -- I'm pointing out that he was not  
14 accusing Apple of infringing at the time.

15 MR. CALDWELL: That's leading the jury terribly on  
16 this.

17 THE COURT: All right. You've heard my ruling.  
18 I'll carry this objection. But I would suggest both sides  
19 not tread too closely to crossing over these MILs. If I'm  
20 convinced that you've done that, I'll enter an appropriate  
21 finding and an appropriate order.

22 MR. BATCHELDER: Thank you, sir.

23 (Bench conference concluded.)

24 THE COURT: All right. I'll carry the objection,  
25 as I've indicated at the bench. Let's proceed with the

1 cross-examination.

2 MR. BATCHELDER: Thank you, Your Honor.

3 Q. (By Mr. Batchelder) So coming back to Defendant's  
4 Exhibit 200, you didn't tell Mr. Ronaldi that you believed  
5 that Apple infringed your patent claims, did -- did you?

6 A. I'm not sure if I told Mr. Ronaldi or not. I told a  
7 couple of the people I was talking to around that time  
8 period. But I'm not sure if I actually told him that or not.

9 Q. All right. Let's go back to Gemplus. You --

10 MR. BATCHELDER: If we can -- is it possible to put  
11 up Slide 31 from the slides that Mr. Racz presented?

12 Q. (By Mr. Batchelder) While that's being pulled up, sir,  
13 let me just clarify, neither you nor the companies that  
14 you've been associated with have sued Gemplus, correct?

15 A. I haven't, sir, no.

16 Q. None of the patents being asserted here were asserted  
17 against Gemplus?

18 A. No, they're not, sir.

19 Q. All right. So I'm looking at your Slide 31, and it  
20 refers to a slide deck of Gemplus. Do I have that right,  
21 sir?

22 A. I believe, yes. It's -- it was a presentation. But  
23 when I saw it, it was a paper presentation that was stapled  
24 together, but I -- it was probably available in a slide show,  
25 yes, sir.

1 Q. Okay.

2 A. I would imagine.

3 Q. And if I understood you correctly on -- on your direct  
4 examination, you were saying that you thought that this slide  
5 deck reflected that Gemplus had somehow stolen an idea of  
6 yours; is that right?

7 A. Yes, that's -- well, I didn't say stolen, but they  
8 were -- I think plagiarizing it. They were using it without  
9 my permission and consent, sir.

10 Q. Now, can we look at the bottom of that page? The name  
11 on it is Steven Landau, correct?

12 A. That's correct, sir.

13 Q. Now, after this, you hired Mr. Landau, correct?

14 A. That's correct, sir.

15 Q. You made him the president and CEO of Internet Plc,  
16 right?

17 A. No, sir.

18 Q. What was his position?

19 A. He was the president and CEO of Internet Plc, Inc. That  
20 was the U.S. company, sir.

21 Q. I see, okay. And you hired him from Gemplus, right?

22 A. Yes, sir.

23 Q. And Gemplus Management fully cooperated in your hiring  
24 Mr. Landau, correct?

25 A. They recommended that he come work for us, sir.

1 Q. Thank you. You mentioned Britney Spears having canceled  
2 her world tour in September 2001, correct?

3 A. Correct, sir. Yes, just after that.

4 Q. She went back on tour just the very next spring, right?

5 A. I don't recall, sir. She may have done --

6 MR. BATCHELDER: Can we see Defendant's Exhibit  
7 146, please? And can we just blow up at the top there?

8 Q. (By Mr. Batchelder) It's -- you'll see it's dated May  
9 6th, 2002, correct?

10 A. Yes, sir.

11 Q. And it refers to the Dream Within a Dream tour, correct?

12 A. Yes, sir.

13 Q. 2002?

14 A. Correct, sir.

15 Q. And Smartflash is reaching out to -- to Britney Spears  
16 to propose more collaboration, correct?

17 A. Yes, sir.

18 Q. Okay. So after she canceled one tour, she was back on  
19 tour. You were working with her again, right?

20 A. Not on the tour that we were supposed to be doing, sir,  
21 no.

22 Q. Well, you were proposing that as -- Internet Plc was  
23 proposing to work with her on this tour, right?

24 A. It wasn't the same tour. It wasn't the European tour,  
25 so we didn't have the backstage content and everything that

1 we'd envisioned originally, sir. It was a different -- it  
2 was a different proposition, a different situation.

3 Q. Sir, was Smartflash -- was Internet Plc making a  
4 proposal to work with Britney Spears in connection with this  
5 May 2002 tour?

6 A. I don't believe so, sir. I don't think that's an  
7 Internet Plc presentation, sir, no.

8 Q. What company is it?

9 A. It's NVU, sir.

10 Q. I'm sorry?

11 A. NVU.

12 Q. You're talking about the Smartflash -- Smartflash seeks.  
13 Do you see that in the first line?

14 A. I -- I need to see the whole -- could I -- would it be  
15 possible for me to see the whole document so I could --

16 Q. We can browse through as much of -- as much as you want.

17 MR. BATCHELDER: Is there another page?

18 THE COURT: If the witness doesn't know, he needs  
19 to say he doesn't know; but it's not for the witness to ask  
20 to go further. They'll show you what they want to show you.  
21 If you can answer it, answer it.

22 Counsel for Plaintiff will have a chance to  
23 redirect.

24 THE WITNESS: Sorry, Your Honor.

25 THE COURT: All right. No problem. Let's go



1 forward.

2 Q. (By Mr. Batchelder) All right. So there's a reference  
3 to Smartflash seeking to do something here, correct, sir?

4 A. Yes, that's what it says.

5 Q. Okay. And you were associated with an entity called  
6 Smartflash Limited at the time?

7 A. Yes, sir.

8 MR. BATCHELDER: All right. Can we put up  
9 Defendant's Exhibit 324, please?

10 Q. (By Mr. Batchelder) And in that first line there -- I'm  
11 sorry, at the top, that's your name, right, Mr. Racz?

12 A. Yes, sir, that's correct.

13 Q. And it's to a Mr. Twysden Moore, correct?

14 A. That's correct, sir.

15 Q. And who is Mr. Moore?

16 A. Mr. Moore is someone I know through a friend. He's a  
17 business associate of a friend of mine. I've known Mr. Moore  
18 for several years, but not -- not -- I just know him every  
19 now and then. We bump into each other.

20 Q. Okay. And in the first sentence there you refer to my  
21 patent at the end there, right?

22 A. That's correct, sir.

23 Q. And you're referring to the '720 patent?

24 A. That's correct, sir.

25 Q. Okay.

1 MR. BATCHELDER: Can we now pull up Defendant's  
2 Exhibit 249? Can we go to Page 24?

3 Q. (By Mr. Batchelder) And it refers to a negotiation  
4 between and you Mr. Moore, correct?

5 A. Yes, sir -- yes, it does. It refers to meetings that we  
6 had, yes, sir.

7 Q. And can we look where it refers to a cold offer at about  
8 the middle of that paragraph?

9 A. Yes, sir.

10 Q. And was this a cold offer that you received from  
11 Mr. Moore?

12 A. I believe it was, sir, yes. It was through an associate  
13 of his, Mr. Holwell, sir.

14 Q. Okay. And the offer was for a 200,000-dollar lump-sum  
15 payment in return for a 20-percent equity stake in your  
16 patents; is that right?

17 A. That's correct, sir.

18 Q. And when you say it was a cold offer, do you mean that  
19 before receiving that offer, you had not communicated with  
20 Mr. Moore about a deal involving a 200,000-dollar lump-sum  
21 payment in return for a 20 percent equity stake in the '720  
22 patent and its continuations?

23 A. I don't think I communicated with Bill Holwell at  
24 Trilithon Intellectual Property. I'd had conversations and  
25 exchanges with Twysden Moore, sir.

1 Q. Okay. Prior to this -- this March 9, 2010 offer that  
2 referenced here, had you communicated with Mr. Moore about a  
3 deal involving a 200,000-dollar lump-sum payment in return  
4 for a 20 percent equity stake in the '720 patent and its  
5 continuations?

6 A. I'd certainly had discussions and negotiations with  
7 Twysden Moore. I don't remember specifically what the  
8 amounts were or what the percentages were, but --

9 Q. Okay. Are you saying, sir, that you don't know one way  
10 or the other whether you'd had that conversation with  
11 Mr. Moore before?

12 A. I had conversations with Mr. Moore. I can't remember  
13 the specifics of it, sir.

14 Q. So it's possible that those very same terms had come up  
15 just a month earlier, \$200,000 for a 20 percent stake?

16 A. I -- I don't recall that, sir. It's possible, but I  
17 don't recall it.

18 MR. BATCHELDER: Your Honor, may I approach?

19 THE COURT: You may.

20 MR. BATCHELDER: Can I invite counsel to join me?

21 THE COURT: You want to approach the bench or the  
22 witness?

23 MR. BATCHELDER: I'm sorry, the bench.

24 THE COURT: All right.

25 MR. BATCHELDER: Thank you.

1 (Bench conference.)

2 MR. BATCHELDER: I have -- I have a document that's  
3 not pre-admitted, but it reflects that a month earlier he had  
4 that conversation with Mr. Moore. I just want to clear it  
5 with the bench before I use it.

6 THE COURT: There's no requirement that you can  
7 only use pre-admitted exhibits to impeach.

8 MR. BATCHELDER: Okay. I just wanted to be clear.  
9 I didn't want to transgress.

10 THE COURT: You have any problem, Mr. Caldwell?

11 MR. CALDWELL: I don't know the document. I mean,  
12 in this setting, it's kind of hard to say. I haven't even  
13 seen which one he's referring to.

14 THE COURT: Well, it will either work or it won't  
15 work. You never know what a witness is going to say. If it  
16 opens the door to impeachment, therefore, you can't be  
17 limited in advance as to what you can use to impeach.

18 MR. BATCHELDER: Thank you, sir.

19 (Bench conference concluded.)

20 THE COURT: All right. Proceed, counsel.

21 MR. BATCHELDER: Thank you, Your Honor.

22 Can we pull up DX 322, please?

23 Q. (By Mr. Batchelder) This is from Mr. Moore to you,  
24 correct, sir?

25 A. Yes, it looks to be, sir.

1 Q. And it was a month earlier, correct?

2 A. I don't know what the date was on the previous document,  
3 but --

4 Q. That was -- it referred to a March 9, 2010 letter. Do  
5 you remember that?

6 A. Okay.

7 Q. And now this is from Mr. Moore to you in February,  
8 correct?

9 A. Yes.

10 MR. BATCHELDER: And if you could scroll down --

11 Q. (By Mr. Batchelder) There is a reference below to a  
12 200,000 lump-sum payment, correct?

13 A. Yes. Could I just read that, please, sir? And if you  
14 could just -- okay. Thank you.

15 Q. He -- he refers in the middle of that paragraph to: I  
16 would like to clarify that I'm working on a first refusal  
17 assumption for the raising of the U.S. \$200,000 for 20  
18 percent of the patent ownership vehicle.

19 Do you see that?

20 A. Could -- yeah, I do see it. But could I read it from  
21 the top, sir?

22 Q. Sir, right now I'm asking you if you see that. Do you  
23 see that?

24 THE COURT: The witness needs to answer the  
25 question.

1 THE WITNESS: I can see it, sir, yes.

2 THE COURT: Okay.

3 Q. (By Mr. Batchelder) All right. And so this came a  
4 month earlier than the offer for \$200,000 for 20 percent of  
5 the patent ownership vehicle that you just described earlier  
6 as a cold offer, correct, sir?

7 A. That's correct, sir, yes.

8 Q. Sir, each of the accused Apple products reflects  
9 significant inventive work by Apple, correct?

10 A. Correct, sir.

11 Q. Through its iTunes Store, Apple also makes available to  
12 consumers a massive collection of songs, apps, movies, books,  
13 and other content, correct?

14 A. I would agree with that, sir, yes.

15 Q. Apple adds a lot of value to its products by compiling  
16 such a great collection of content, correct?

17 A. I would agree with that, sir, yes.

18 Q. And for devices like the iPhone content, drives sales,  
19 correct?

20 A. Very much so, yes, sir.

21 Q. Each of the accused Apple devices performs thousands of  
22 functions that you did not invent, correct?

23 A. I -- I don't know that it performs thousands of  
24 functions, but it certainly performs functions I didn't  
25 invent, sir.

1 Q. Each of the accused Apple products has hundreds of  
2 hardware components, correct?

3 A. It may well do, sir.

4 Q. And you and Mr. Hulst did not invent any of the hardware  
5 in Apple's accused devices, correct?

6 A. No, we didn't, sir.

7 MR. BATCHELDER: Your Honor, I pass the witness.

8 THE COURT: All right. This is a good juncture,  
9 Ladies and Gentlemen, to recess for the day.

10 I assume the Plaintiff has redirect of this  
11 witness?

12 MR. CALDWELL: Absolutely, Your Honor.

13 THE COURT: All right. Well, we'll take that up  
14 first thing in the morning.

15 Ladies and Gentlemen, as you exit the courtroom, if  
16 you'll leave your juror notebooks on the table in the jury  
17 room.

18 Let me remind you again of my earlier instructions.  
19 Do not discuss the case with anyone. And when you get home  
20 tonight, that will be one of the most tempting times that you  
21 will have. So feel free to blame it on me. Just tell  
22 whoever asks that you're under strict instructions not to  
23 discuss it at all; and that when this case is over and you're  
24 released, you'll be happy with -- you'll be happy to talk to  
25 them about it at that time, but you cannot talk to them now.

1 Don't discuss the case among each other. Follow  
2 all the other instructions I've given you.

3 I would like to ask that you be in the jury room  
4 assembled by about 8:20 in the morning, and we will try to  
5 start promptly at 8:30.

6 So with those instructions, drive safely, have a  
7 good night, and we'll see you in the morning. You're excused  
8 until tomorrow morning.

9 COURT SECURITY OFFICER: All rise for the jury.

10 (Jury out.)

11 THE COURT: All right. Counsel, we stand in recess  
12 until tomorrow morning. I will attempt to be in chambers by  
13 7:30. If there are any developments or disputes that develop  
14 overnight that require the Court's time, I should be  
15 available during that hour before 8:30.

16 I also remind you before you that bring the jury in  
17 in the morning, I'm going to ask each side to read into the  
18 record those exhibits from the list of pre-admitted exhibits  
19 that were used during today's portion of the trial. Be  
20 prepared to do that.

21 With that, have a good evening. We stand in recess  
22 until tomorrow morning.

23 (Court adjourned.)  
24  
25



CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of our abilities.

/s/ \_\_\_\_\_  
SHEA SLOAN, CSR, RPR  
Official Court Reporter  
State of Texas No.: 3081  
Expiration Date: 12/31/16

February 16, 2015

/s/ \_\_\_\_\_  
SHELLY HOLMES, CSR, TCRR  
Deputy Official Court Reporter  
State of Texas No.: 7804  
Expiration Date 12/31/16